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ernment themselves to set an example by asking
some officers to go and live in villages. (At this
peaker occupied the Chair.)

l like to deal with the conduct of Ministers
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decision was published officially, the Minister
the decision of the Central Road Traffic Board
ie party got an order of stay. This gives an

VOL. XXIII, No. 1 JANUARY-MARCH, 1950

THE POLICE JOURNAL

A Quarterly Review for the Police Forces of the Empire

ISSUED UNDER OFFICIAL PATRONAGE

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SUBSCRIPTION RATES

9/- per annum ($2.50 United States only), including postage to any part of the World.

¶ *Changes of Address.* To facilitate the prompt receipt of each issue, subscribers are requested to notify the publishing office immediately of any changes of address or division.

Publishers and Distributing Agents:

THE POLICE JOURNAL
46/7 CHANCERY LANE, LONDON, W.C.2
Telegrams and Cables—"NUFOTOG, HOLB. LONDON"
Telephone—HOLBORN 6201

American Agents:
PUBLIC ADMINISTRATION SERVICE
1313 EAST 60th STREET, CHICAGO, ILLINOIS, U.S.A

VOL. XXIII, No. 1 JANUARY-MARCH, 1950

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THE POLICE JOURNAL

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Quarterly Commentary

THE SCOTTISH PRISON SYSTEM

THE Report by the Scottish Advisory Council on the Treatment and Rehabilitation of Offenders issued by the Scottish Home Department was issued against a background somewhat different to the prison system in England in that conditions operating in prisons north of the border are, we understand, harsher than those operating here. The Committee, set up in 1944, had already issued reports on a number of subjects affecting the treatment of offenders, including police warnings, probation, approved schools, the Borstal system and sexual offenders. Having thus acquired a wide knowledge the Committee turned its attention to prisons and called before it witnesses representing many aspects of the matter. As could be expected, the majority of the witnesses were persons directly connected with prisons. One witness only was connected with the Police, Mr. S. A. Kinnear, H.M. Inspector of Constabulary for Scotland, but this experienced officer no doubt adequately presented the police interests. The Report shows that there is accommodation for about 3,000 prisoners in Scotland and that during 1948 the average daily population was rather more than half this number—a very different position from that operating in England, where many prisons are overcrowded and two or three prisoners in a cell intended for one is not uncommon.

The ten prisons vary in size from being able to accommodate 953 down to 4, with five under 200. One of the most interesting features of the statistical side of the Report discloses that during 1948 the number of persons sentenced to imprisonment was 8,699, a considerable figure. Of these, more than half received sentences of not more than one month. Only 292 persons, representing 3·25 of the whole, received sentences of twelve months or over, of whom 50, *i.e.* ·57 per cent., were sentenced to three years or more. We have not the comparable English figures before us but hazard a guess that a comparison would indicate that such short sentences are more common in Scotland than in England.

The whole theme of the Report, quite properly, is the reclamation of the wrongdoer, but we doubt whether much can be done to the half of the prison population which remains under treatment for less than a month at a time. Many who serve such sentences return time after time; but the good effects of prison treatment are hardly likely to be cumulative if given in small doses over a period of years.

At paragraph 82 of the Report the Committee sets out, in general terms, four possible views on the purpose of imprisonment :

> "(1) That imprisonment is punitive and deterrent, designed to express the community's displeasure at the breaking of the rules made for its own protection, and accordingly, within limits imposed by considerations of common humanity, it should be made as unpleasant and repressive as possible ; (2) that imprisonment is designed solely to keep the offender in safe custody so as to make it physically impossible for him to break the law for the period of his incarceration—this is frequently alluded to as the 'warehousing' theory ; (3) that imprisonment may be, or may be made, the means of enabling the offender to rehabilitate himself so that on release he is better fitted to accept the demands of citizenship ; and (4) that, in imprisonment, these purposes may be combined in such proportions as may fit each individual case."

In considering these views the Committee points out that the punitive theory has failed and that no such simple remedy as making life in prison so harsh that no one would ever return for a second dose is effective. It could be argued that "the remedy" aggravated the state it attempted to cure. With this no one with knowledge of the matter would disagree.

In regard to the "warehousing" theory, the Committee realises that there is considerable substance in the arguments put forward in its support. "More than two out of five prisoners committed to prison return to prison again," the Report states, and, "It is unnecessary for us to stress the importance of these figures or the waste of human material and money which they reveal. 'Warehousing' is merely a negative policy."

The Committee, having considered the matter and set out its findings, asks the pertinent question, "Is it possible to formulate a reformative policy which, in practice, will be effective ?" and points out that the main difficulty seems to be to combine an effective reformative policy with a punitive regime. It is the view of the Committee that the shame attached to a prison sentence, the loss of freedom, the separation from family and friends and the difficulty of being accepted as a normal member of the community on release, constitute a heavy punishment and will always be a deterrent to potential offenders. "In a word, the sentence and all it implies is the punishment ; the object of prison treatment should not be to increase the punishment but to reform the prisoner."

Our police readers will agree with much of this in its application to first offenders but, apart from the loss of freedom, we doubt whether it has any application whatever to those "over two out of every five" who return to prison after serving their first sentence. We have nothing to say against any attempt to reclaim them, we recognise the appalling waste the prison population represents, but we do not believe that after the first or second time in, the prisoner feels any sense of shame ; he cares little enough for his family or friends and he has little thought about being taken back as a normal member of the community on his release. He will consider he has a genuine cause for complaint if he is not given enough ready money when he goes out and he may hope that someone will find him a job. Whatever plan is made for reformation of prisoners it must be based on a correct assessment of the mentality of the bulk of the prison population and not on any fancy theory that they are sorry for the past and anxious to co-operate in the future. The plain truth is that an appreciable section of them have deliberately chosen a life of crime or drifted into it and will not change unless they are forced to do so or they are convinced it will pay them to do so.

The Report proceeds to recommend how reformative treatment can be carried out but, despite rather sensational headlines in the national press, there is little which is other than an extension of the present practice in England. It is suggested that each prisoner should be classified at a special centre on reception. In the past this classification, where done, was broadly into age and conviction groups. It is now suggested that no one should be sentenced to imprisonment for a period of six months or any shorter period unless the Court is fully satisfied that no other method of dealing with the case is possible in the interests of the community and the offender. We agree that such short sentences, with their remission, are "harmful to the offender and a waste of public money." We feel, however, that Courts will require some education in the new system before they will take such steps. It is sound, we suggest, to do all possible to keep an offender out of prison, thus using to the full any deterrent effect the fear of prison might have upon him, for we feel sure that the new prisons, once sampled, will have little such effect. Classification, for those serving over six months, is to be according to their mental development. This must be a matter for the expert but many points, for and against, come readily to mind. The Report seems to indicate what we had already felt, that the majority, 70 per cent., is of low intelligence and perhaps it is a rather harsh punishment, without purpose, to make, say, a defaulting solicitor, spend years in association with them. It might be found necessary later, if the scheme is adopted, for the Courts to frown heavily upon the man who comes back from the top class, Police have no politics but they are quick to respond to sympathetic interest, and no one can doubt that the Home Secretary has approached his responsible duties in connection with the Force in an honest and sympathetic way. His task has not been easy and he has not given the Federation all they asked, but his approval has been open and sincere.

The speech to which we refer contained an appeal and we hope it will receive a good response. He said, "The most successful recruiting sergeant is the person on the job—the police constable." This is a very true statement and could be carried further; conversely, there is no one who can decry a job more effectively than the man who is doing it. It is a very natural step for any young man who is contemplating a new career to have a chat with someone who has already taken the plunge. It is frequently said in the Service that it is an Englishman's privilege to grouse, but a grousing policeman can do a lot of harm. He certainly does no one any good. If serving members of the Force directed their efforts to the task they could, we are convinced, rapidly fill the gaps in their ranks. A depleted force makes the work harder for all and we hope the Home Secretary's words fell on fertile ground. A word of encouragement here and there, to carefully selected listeners, a cheery response to the young man who makes an enquiry, will go a long way to meet a problem which continues to be serious both for serving members and for the public.

Preventive Detention

Talks with many senior police officers lead us to forecast that criminal statistics for 1949, when published, will show a definite and welcome reduction in crime throughout the country. The trend for many years has been upwards and we hope that the peak has been reached and that the downward curve will be as sharp as was the upward climb. We are stating nothing new when we express the view that to no one cause can the change be attributed; there are many factors, including a gradual levelling up in supply and demand of those goods which are capable of being stolen. In former times much stress was laid on unemployment as a cause of crime; but this factor, strong as all will agree it was in the past, no longer makes an important contribution.

Police officers have already expressed the view that the Criminal Justice Act has made an important contribution to the problem. The Act, which probably came into operation before the Prison Commissioners were ready for it, certainly went into action with a will to win. Had no restraining influence been brought to bear, the prisons would have become so over-full that an impossible situation would have been reached, but the number of habitual criminals at large would have been

agreeably reduced. In October, the Lord Chief Justice made an important statement which will have the effect of reducing in number the sentences of preventive detention. He reminded the Courts that preventive detention was not intended to replace penal servitude and should not be used in that way. The Police had not looked on the new provisions in this light but had welcomed them as making more simple the preliminary procedure and the proof necessary before the Courts could consider passing such a sentence. In effect, the new Act recognised that there is a type of criminal who is determined to prey upon society and the only effective method of protecting society is to put him where opportunities for committing crime are not open to him, and, accordingly, reviewed the provisions of the Act of 1909, bringing them into line with modern requirements and practice. We hope the statement of the Lord Chief Justice will not influence Courts too far against the use of the sentences the 1948 Act clearly intends shall be passed in certain cases.

The Police and the Law

Previous Convictions as Justifying the Arrest of a 'Suspected Person'

NO rule of the English criminal law is better known than that which forbids the admission of evidence that the accused has been convicted of previous offences. There are exceptions to this rule as there are to most rules, and one of the exceptions has been emphasised by the Court of Criminal Appeal in the case of *R.* v. *Fairbairn* (65 *T.L.R.* 559) in connection with arrest without warrant for offences under the Vagrancy Act, 1824. The reason why the evidence of previous convictions is not allowed to be given in the ordinary case is because they are not considered to be relevant. If the charge against a man is, for example, of breaking and entering a house on January 1st, 1949, it is not relevant to that charge that he was convicted of breaking and entering a house on January 1st, 1948. It only goes to show that he is a person who might be likely to commit an offence, but not that he committed that offence. But when an Act like the Vagrancy Act, 1824, which has now been on the statute book for 125 years and has been authoritatively expounded by the Court of Appeal, is in question and it is necessary to bring a person within the category of a suspected person under the Act, there is no better evidence that such person comes within that category than by proving that he has had one or more previous convictions.

This is the gist of the decision in *R.* v. *Fairbairn*. The Lord Chief Justice said by way of illustration that "If a man is found loitering in the street acting in a suspicious manner, and he has half a dozen previous convictions, obviously he can rightly be regarded as a suspected person by reason of his previous convictions, which supply evidence of his intention to commit a felony." "It is the previous convictions which make him a suspected person and," declared his Lordship, "previous convictions can always be proved if they are relevant to the charge before the Court."

The accused was convicted under section 23 (2) of the Firearms Act, 1937, of the offence of being in possession of a firearm at the time of his arrest under section 4 of the Vagrancy Act, 1824, on a charge of being a suspected person loitering with intent to commit a felony. Section 4 of the Act of 1824 is, of course, the section which provides that every suspected person or reputed thief frequenting any highway or any place adjacent to a street or highway with intent to commit felony is guilty of an offence, that is to say, of being a rogue and vagabond. If he is in possession of a firearm in these circumstances he is also guilty of an indictable offence under the Firearms Act. The evidence of police officers was that they saw the accused and two other people whom they knew to be suspected persons. The reason why the police knew the accused was a suspected person was that he had been previously convicted. This would not, naturally, be enough of itself to justify an arrest; a man with previous convictions for dishonesty cannot be arrested merely because he is walking down a street. There was ample evidence, which the jury accepted, that the accused was frequenting the highway with the necessary intent. The evidence of police officers was that they had seen the men peering into motor-cars and trying the doors; in other words, seeing if they could find a car with an open door. If they could have found one, it would have been a reasonable inference that they intended to take the car and drive it away, or, if not, lay their hands on any portable property in the car. The Court of Criminal Appeal held that there was evidence on which the jury could properly have convicted and that the evidence of the previous convictions was admissible to prove that the accused was a suspected person at the time when he was seen by the Police. His appeal against conviction was dismissed.

In the leading case of *Ledwith* v. *Roberts* (1937 1 *K.B.* 232) the Court of Appeal laid down that, before the arrest, the conduct or character of the people concerned must be such that they came fairly within the category of being suspected persons. In the recent case the Court of Criminal Appeal thought that it was perfectly clear that if the Police in *Ledwith* v. *Roberts* had been able to show that the two men whom they arrested had been previously convicted there would have been no doubt that the arrest would have been justified. It was just because the Police in *Ledwith* v. *Roberts* could give no evidence

of antecedent acts or of antecedent character that it was impossible to prove that the accused came within the category of suspected persons.

Recent Judicial Decisions

Form of Notice of Intended Prosecution for Careless Driving

Venn v. *Morgan*

A NOTICE under section 21 (*c*) of intended prosecution for an offence under the Road Traffic Act, 1930, should not be considered as a formal document like a summons or a conviction. The object of the notice is to call the attention of the driver of the motor-car to the time and circumstances in respect of which he may be charged so as to give him an opportunity, in good time while memories are still fresh, to prepare his defence. A member of the Divisional Court used these words in allowing the appeal of a police inspector in ***Venn* v. *Morgan*** (1949, 2 *All E.R.* 562) from a decision of justices dismissing an information for careless driving.

The respondent was charged with careless driving contrary to section 12 (1) of the Road Traffic Act, 1930. In pursuance of section 21 (*c*) of the Act a notice of intended prosecution had been served on him wherein it was stated: ". . . it is intended to institute proceedings against you for an offence against section 12 of the Road Traffic Act, 1930, namely that you did drive a motor-car on the Cambridge-Linton road, Babraham, at approximately 4.25 p.m. on Saturday, January 29th, 1949." The words of section 12 describing the offences thereunder, namely driving "without due care and attention" or "without reasonable consideration for other persons using the road," were omitted from the notice. The respondent objected that the notice was bad. The justices upheld this objection. The point is not an easy one, as is shown by the fact that one of the three judges of the Divisional Court dissented from the majority view that the justices were wrong.

The majority decision rested on the following considerations. The language of section 21 (*c*) is not that the alleged offender is to have fourteen days' notice of an intended prosecution specifying the alleged offence but that he is to have a notice "specifying the nature of the alleged offence." The reference to section 12 in the notice in the present case gave the respondent notice that he was going to be summoned either for driving a motor vehicle on a road without due care and attention or driving a motor vehicle on a road without reasonable consideration for other persons using the road. Those are two separate offences, but in the descriptive note beside section 12 they are summarised as "careless driving," and in section 21 those two offences are grouped together under the head of "careless driving." This lay-out of the Act supports the view that the notice is sufficient if it merely alludes to the nature of the offence without setting out the offence in detail. The appeal was allowed with costs and the case remitted.

Conviction of Murder After Conviction of Wounding With Intent

R. v. *Thomas*

The appellant in this case was convicted on May 2nd, 1949, of having feloniously wounded his wife with intent to murder her on March 20th, 1949, and was sentenced to seven years' penal servitude. At that time his wife was alive in hospital. She later died on June 7th, as the result of the wounds which had been inflicted on her. The appellant was then indicted, in accordance with what the Court of Criminal Appeal later described as the usual practice, for the murder of his wife. The Court said that the same facts were not unusual but had occurred time out of mind and the same results had followed. He was convicted of murder on this second trial.

His ground of appeal was that his plea of *autrefois convict* ought not to have been rejected by the court of trial. This argument was not accepted by the Court of Criminal Appeal. The crime of murder consists of the felonious killing of another with malice and it was plain that the appellant had not been convicted previously of that offence, or of anything which was substantially the same as that charge, nor could he have been so convicted since, at the time of his first conviction, his wife was still alive. It followed that the plea of *autrefois convict* was bound to fail.

But the appellant also sought to rely on another principle to the effect that a man must not be twice punished for the same offence. Whatever the exact extent of this principle the Court made clear that it did not mean that a man should not be liable to be punished for the same act. It was not and never had been the law that a man should not be liable to be convicted twice for the same act. The same act might give rise to two or more quite distinct offences, as in *R.* v. *Thomas*. There were many decisions inconsistent with the argument put forward by the appellant, including a case in which it was held that the accused could properly be indicted for murder after having been acquitted on a charge of wounding with intent to murder. The appeal in *R.* v. *Thomas* was dismissed.

Fresh Evidence as to Identity Admitted on Appeal

R. v. *McGrath*

This case (1949, 2 *All E.R.* 495) came before the Court of Criminal Appeal on a reference to that Court by the Home Secretary after a

previous appeal by the appellant against conviction had been dismissed. It appeared that the Home Secretary had caused inquiries to be made and as a result of these it seemed that, if further facts had been before the jury on the question of identification, the probabilities were that they would have felt that two police officers were mistaken in their identification. It was made clear that their good faith in giving evidence at the trial was not attacked. The Court said that mistakes are sometimes made by honest witnesses in cases of identity.

There was no question but that the appellant had a perfectly fair trial in the sense that evidence was taken on both sides. The trial judge pointed out to the jury the ample opportunity that the police officers had of satisfying themselves as to the accused's identity. On the first appeal the Court was requested to allow further evidence to be called, but this was refused as it is well established that this cannot be done unless it is shown that the proposed witnesses were not available at the trial, or that some point which could not have been foreseen arose at the trial on which the evidence would have been material. As the Court said on the second appeal: "This Court is frequently asked to reverse verdicts in which a jury have rejected an alibi, but this Court cannot interfere in those cases in the ordinary way, because to do so would be to usurp the function of the jury. Where there is evidence on which a jury can act and there has been a proper direction to the jury this Court cannot substitute itself for the jury and re-try the case. That is not our function. If we took any other attitude it would strike at the very root of trial by jury."

On the first appeal, therefore, it was simply a case in which a man had been convicted by the verdict of a jury, there being evidence on both sides. On the second appeal, however, different considerations arose as it was a reference by the Home Secretary. Such a reference is made by him because representations have been made to him that it might be a proper case for the exercise of the Royal prerogative. He has a much wider discretion than the Court of Criminal Appeal. He can hear and consider any evidence which would influence him in considering whether or not he should advise the exercise of the Royal prerogative. For these reasons the Court thought that it should hear the fresh evidence on the identification issue. As a result of hearing that evidence it came to the conclusion that the only safe thing to do was to quash the conviction.

Previous Convictions Mentioned at Preliminary Hearing: No Irregularity

R. v. *Fletcher*

After the appellant had been committed for trial in this case (113 *J.P.* 365) he applied for bail and the justices asked the police officer in charge of the case: "Have you any objection to bail?" The answer of the officer was: "Yes, we have, because this man has been repeatedly convicted before." The justices were then told what the convictions were. He appealed against his conviction on the ground that as his previous convictions had been mentioned publicly three or four weeks before the trial the jury might have known all about them. Whether in fact the jury knew the Court of Criminal Appeal did not know and could not inquire, but there was no reason to suppose that the jury knew anything about him. The Court said that what had taken place in this case takes place daily in magistrates' courts and the Court had no power and no desire to prevent it from taking place. What was very desirable was that, if newspapers are reporting the case, they should not include in the report any mention of the previous convictions. In this case, according to the police report, the newspapers acted perfectly properly in not mentioning the convictions at all. There was held to be no ground for interfering with the conviction.

Keeping of Records of Goods Vehicle Used in Business of Agriculture

Manley v. *Dabson*

The Goods Vehicles (Keeping of Records) Regulations, 1935, impose on those owning and driving goods vehicles duties with regard to the keeping of records, from which duties exemption is by regulation 6 (3) (*a*) granted "in the case of a vehicle used in the business of agriculture" so long as the journey does not take the vehicle beyond a radius of more than 25 miles from the place where it is ordinarily kept. In *Manley* v. *Dabson* (65 *T.L.R.* 491) informations were preferred by a superintendent of police under section 16 of the Road and Railway Traffic Act, 1933, alleging that a farmer being the holder of a C licence in respect of a 'utility' motor-car, unlawfully failed to keep a current record of a journey of the vehicle, contrary to regulation 6, and that his wife, who was driving the car, had failed to carry such a record, contrary to regulation 8. The vehicle was carrying green vegetables in boxes grown in the farmer's farm 2½ miles away. The vegetables were being delivered by the wife on behalf of her husband, who had sold or intended to sell them to an hotel. No current record of particulars of the journey had been kept.

The justices held that the car was not being used at the time of the journey in the business of agriculture since it was being used for marketing or delivering green vegetables on sale by retail to an hotel, and that that was not a use in the business of agriculture. They convicted both defendants. The High Court allowed their appeals. On the true construction of the expression "used in the business of agriculture" it seemed to the Court that a farmer is using his vehicle in the business of agriculture if he is taking the produce grown on his farm for sale, for that is the only way in which he can carry on the business of agriculture. The words are not "used in agriculture" but "used in the business of agriculture," that is to say, in the business of a farmer. There is nothing more akin or appurtenant to the business of a farmer than selling the produce which he grows on the farm. The Court disagreed with a case which is briefly noted in Stone's *Justices' Manual* but not reported.

Power of High Court over Justices' Perverse Decision

Afford v. *Pettit*

"There is at the present time a Bill before Parliament one effect of which will be, if it becomes an Act, that separate commissions of the peace will be taken away from small boroughs, especially small boroughs which have no recorders. One of the reasons why the Bill has been introduced following on the report of a committee set up under the chairmanship of Lord Roche is the difficulty which the Lord Chancellor has of finding suitable justices in these small boroughs. This case seems to be a startling instance of how necessary reform is in that direction." With these ominous words the Lord Chief Justice opened his judgment in *Afford* v. *Pettit* (113 *J.P.* 433), a case in which the High Court held that the findings of the justices were obviously perverse and sent it back with a direction that the offence was proved.

An information had been preferred against the respondent, a borough councillor of Huntingdon, under section 33 of the Larceny Act, 1916, alleging that he received a large quantity of coke knowing the same to have been stolen. He admitted that he had asked his employee, a lorry driver, to bring him some coke, but said that he "thought he would bring sweepings." The lorry driver brought some three cwts. of coke and deposited it in the respondent's coal shed. Lord Goddard thought that a more pitiable defence had never been set up and that on the facts he could not believe that a jury at quarter sessions in the most backward county in England—not that that applied to Huntingdon—could possibly come to any other conclusion than that the respondent was guilty. It was lamentable that the justices should have shut their eyes to the obvious in the way in which they did to avoid convicting a borough councillor.

It was also said that the initial wrong in the case, so far as the justices were concerned, was that they assumed jurisdiction to try the case when they should not have done so: "Nothing can be worse in a small borough, where a borough councillor is summoned before the court on a charge of felony—not a charge of some minor offence such as leaving a motor-car in a street or not having a rear light on a bicycle, but one of felony—than that the justices should assume jurisdiction to try him. Unless such a case is wholly exceptional it should be sent for trial. If the justices deal with the case themselves and convict and the accused is of a different political party from those on the bench it may be said that they are influenced by political considerations. If they acquit, they are open to the charge of partiality in favour of a borough councillor." The High Court also reaffirmed a jurisdiction which it has always possessed over magistrates' and justices' courts, that is to say, that if it is apparent that the findings of the justices are perverse, the Court will reverse those findings.

Alteration of Sentence by Trial Judge
R. v. *Gomer*

It is competent for the trial judge to alter the sentence passed provided it is done at the same assizes or sessions at which it is pronounced, but, as the Court of Criminal Appeal declared in *R.* v. *Gomer* (33 *Cr. App. R.* 91), the alteration, where possible, should be publicly stated in court. The Court recognised that this is not always possible. The applicant for leave to appeal against sentence had pleaded guilty at quarter sessions to garage-breaking, and the recorder said : "The sentence of the court upon you is that you be kept in prison for twelve months, and that to be consecutive to the sentence which you are serving at the moment." It appeared that, although the sentence was pronounced in court, there was a subsequent alteration to the sentence of nine months' imprisonment. On the application for leave to appeal against this sentence the Court of Criminal Appeal held that it did not matter in this case that the altered sentence had not been publicly pronounced, because whether the sentence were one of nine months or twelve months the application would have to be refused. The sentence of nine months therefore stood.

Red Petrol : No Need to Take Sample Where Offence is Admitted
Chapman v. *Smith*

An information was preferred by the appellant, a police inspector, in *Chapman* v. *Smith* (113 *J.P.* 464) alleging that the respondent, being the owner of a private motor vehicle, on October 28th had present in the tank a quantity of commercial petrol. A sample was taken on the same date and it was found that it contained a quantity of commercial petrol. The respondent thereupon admitted to the police officer that he had put red petrol into the tank. On February 14th following, the respondent was charged with having committed an offence under section 2 (1) of the Motor Spirit (Regulations) Act, 1948, and he contended

(i) that the sample had not been dealt with in accordance with the requirements laid down by section 10, and, therefore, that the analyst's certificate could not be admitted in evidence, and (ii) that the prosecution had not called evidence to prove that a notice pursuant to section 5 (8) (*a*) had been given. The information was dismissed and an appeal was brought by way of case stated to the High Court.

The case was remitted to the justices with a direction to convict. Lord Goddard, C.J., said that the police officer took a sample of the petrol with a view to its being analysed if it should become necessary, but that it never became necessary to analyse the sample because the respondent made a statement to the Police, which was not challenged and in which, in the clearest possible terms, he admitted that he put red petrol into the car. He said that he did it for the reason, which is very often given in these cases but which the Act does not allow to be taken as an excuse, namely that he had run out of petrol, and as he had some red petrol for his tractor he tipped it into the car.

The position is made quite clear in the following passage in the judgment : "Of course, he was committing an offence under the Act, and no question about a sample arises, because it would only have been necessary to prove the sample if there had been a dispute whether or not he had put red petrol in the tank of the car. Other questions might then have arisen, the provision in the Act being that if the sample is not taken strictly in accordance with the Act the analyst's certificate cannot be admitted in evidence. In the events which happened here no analyst's certificate need have been put in. The respondent admitted the offence. What is the point of the prosecution going on to say : 'We have had an analysis made and find that you did put red petrol in your car.' That is a waste of money, time and everything else."

It followed that a conviction had to be registered by the justices and that then would come the question what penalty was to be imposed. The High Court said that as the summons was not served within three months of the commission of the offence the justices would have to inquire whether or not notice of the intended prosecution was given to the respondent within twenty-eight days of the commission of the offence. If it was, very severe penalties applied. If the notice had been given, the justices were bound by the words of the Act to revoke the licence in respect of the car. In addition to that there was a monetary penalty or a penalty of imprisonment, or both, which might be inflicted.

Notice of Intention to Prove Previous Convictions
R. v. *Dickson*

The Court of Criminal Appeal has several times been called upon to elucidate the new procedure regarding sentences prescribed by the

Criminal Justice Act, 1948, and no doubt more rulings must be expected to remove doubts which have arisen in the day-to-day administration of the new Act. In *R.* v. *Dickson* the Court explained the scope of section 21, which provides for two new forms of sentence, namely corrective training and preventive detention. Section 23 (1) lays down two conditions which must be fulfilled before those sentences can be passed. The two conditions are, first, that motive of intention to prove previous convictions must be served on the accused three days before his trial, and, second, he must be asked whether he admits them. The section does not in fact say that the admission must be made in court.

In expounding this procedure, the Lord Chief Justice remarked that the various new provisions of the Act of 1948 to some extent complicated what used to be the simple procedure of sentencing prisoners. So many matters had now to be borne in mind by a court that it was not surprising that it should be diverted from the important question of the proper sentence to impose.

The question arising on the appeal in *R.* v. *Dickson* was a technical one though of great importance to those responsible for the prosecution. The appellant had pleaded guilty to two offences of a very serious character. Notice of intention to prove three specified previous convictions was duly served on him in compliance with section 23 (1) and he made a signed admission on the notice of those three convictions. Unfortunately evidence was not given at the trial that the notice had been served, and he was not asked whether he admitted the previous convictions. The only thing said in court was the statement by a police officer that section 21 (5) of the Act had been complied with in that a copy of the Prison Commissioners' report had duly been served on the prisoner. The trial judge, having before him the notice of intention to prove previous convictions, and bearing the prisoner's signed admission of them, probably forgot that the convictions had to be put to him in court. The Court of Criminal Appeal thought it was a good opportunity to state what was the proper procedure to be adopted in all courts in the matter of proving previous convictions.

The procedure should be as follows. First, after a plea, or a verdict, of guilty, a police officer should be called by counsel for the prosecution, who should prove that the officer had served on the prisoner three days before the trial notice of intention to prove previous convictions. Secondly, the clerk of assize or of the peace, as the case might be, should put to the prisoner the convictions mentioned in the notice and obtain his admission or denial of them in open court. Thirdly, there must then be handed to the prisoner or his counsel a copy of the Prison Commissioners' report. When all that has been done, the proceedings will be in order. The Court in *R.* v. *Dickson* expressed no

opinion on what the judge should do if a prisoner, having admitted the previous convictions when notified of intention to prove them, then in court withdrew his admission and denied them. As in *R.* v. *Dickson* the requisite formalities had not been observed the Court felt obliged to set aside the sentence of preventive detention.

Preventive Detention : When Appropriate

The Lord Chief Justice made an important statement on the subject of sentences of preventive detention at the sitting of the Court of Criminal Appeal on October 18th. He said that a common sentence of that description had been one of five years and the Court felt that in many instances courts were passing that class of sentence in cases where, but for the substitution of imprisonment for penal servitude, the sentence would have been penal servitude for the same number of years. He thought it right to emphasise that in the opinion of the Court of Criminal Appeal it was not the intention of the Criminal Justice Act, 1948, to substitute preventive detention for the old sentence of penal servitude. If the court of trial was of opinion that a given number of years was the appropriate sentence it did not by any means follow that because the prisoner had the requisite number of previous convictions the sentence should be one of preventive detention rather than imprisonment ; still less did that follow because of a report from the Prison Commissioners that the prisoner was suitable for that form of sentence. Their report was merely as to his suitability, if the Court deemed it right to pass such a sentence.

The Court of Criminal Appeal has already said that preventive detention ought to be awarded only in cases where, before the Act of 1948, there would probably have been a charge and finding that the prisoner was an habitual criminal. Before the Act, as in such a case at least three years' penal servitude had first to be given, the total length of detention would have been at least eight years. The Lord Chief Justice said that preventive detention ought to be passed only where prolonged detention was necessary for the protection of the public. It might well be, he said, that when a sentence of five years' imprisonment would ordinarily be passed the Court might consider that the particular circumstances required an additional term because of the criminal proclivities of the offender, and so give seven, ten or even more years' preventive detention. Possibly if a sentence of two or three years would ordinarily be regarded as appropriate, preventive detention of five years might, in some cases, be deemed justifiable, but he was of opinion that preventive detention should be regarded as an exceptional sentence and not one to be given merely instead of imprisonment. Where it was given it ought to be for a long period. As a rule, five years would only be appropriate in the case of a man of advanced age who habitually committed crime, it might be of a petty nature, who must, therefore, be kept in custody, but who, it might be hoped, would not end his life in prison.

" In Any Building " With Intent
R. v. Parkin

The question in *R. v. Parkin* (1949, 2 *All E.R.* 651) was what do the words " being found in any building " mean in section 28 of the Larceny Act, 1916, which provides that every person who shall be found by night in any building with intent to commit any felony therein shall be guilty of a misdemeanour. The answer given by the Court of Criminal Appeal was that one has to apply the ordinary meaning to the words unless the context requires them to be given some unusual meaning. The ordinary meaning of the words in the section is that the person must be found *in* a building. The circumstances of the case showed, in the opinion of the Court, that the appellant was not found in the building but that he was found outside the building trying to get in. Shortly after midnight a police officer passing near a cinema saw him half-way up some piping at the side of the building with his foot at the junction of two pipes and his head and shoulders close to a window. In the police officer's opinion, though he could not see clearly, the appellant had one of his hands through the window for the purpose of gripping the sill and pulling himself into the building.

At the trial the defence submitted on these facts that he was not *in* the building for the purposes of section 28 (4). The prosecution argued that if he had been charged under section 27 (2) with breaking and entering the fact that he had one arm through the window would be a sufficient entry for the purposes of constituting that offence. He was convicted at quarter sessions but on appeal the argument of the defence was accepted and the conviction quashed. The Court made clear that whatever other offence he might have been guilty of, he was not guilty of the offence with which he was charged, namely being found in a building with intent to commit a felony.

Criminal Law and Practice in Scotland

Road Traffic Act 1930, Sec. 15
Murray v. *Muir*

ONE is familiar with the suggestion frequently made by defence agent or counsel in a " drunk in charge " case that the accused should not be convicted because, in point of fact, he did successfully

drive his car for a material distance without accident or even, it may be, without any obvious sign of inefficient or erratic or careless driving. How, then—so runs the argument—can it be maintained that he was under the influence of drink to such an extent as to be incapable of having proper control ? Did not his manner of driving show that he had control ? This argument will lose much of its force in the light of the recent High Court decision in *Murray* v. *Muir*.

Briefly stated, the facts on which conviction was secured in this case were (1) that at 8.50 p.m. on January 2nd, 1949, a man was seen to leave a public house and drive off a lorry ; (2) that at 9.40 p.m. the same lorry was standing outside a hotel ; (3) that at 10.10 p.m. the same man came out of the hotel, entered the lorry and drove off ; (4) that he drove about 200 yards before being stopped by the Police and that there was " nothing untoward " in his manner of driving ; (5) that, on leaving the lorry at the request of the Police, he staggered slightly and leant against the door and that he smelt of alcohol and his speech was thick and slurred ; and (6) that after examination at 10.56 p.m. a police surgeon granted a certificate in the usual terms.

An appeal against conviction failed. The views of the majority judges in the High Court of Justiciary were thus expressed by the Lord Justice General : " The fact that a man contrives to drive a lorry for about 200 yards under the circumstances figured (*i.e.* in the country, at night, along a straight, level arterial road of great width at an unspecified speed) seems to me to afford little or no evidence on the question of his capacity to have proper control of that vehicle. It is perfectly easy to figure circumstances under which a driver, though completely intoxicated, might successfully drive a motor lorry for such a short distance and under such conditions without coming to grief. The acceptance of counsel's view would really amount to an instruction to the Police that, when they see a case of suspected contravention of section 15 of the Act, they must follow complacently behind the vehicle in question until an accident or other untoward happening occurs, so that they may then be able to produce evidence of incapacity on the part of the driver to have proper control of the vehicle. The adoption of such an attitude would, in my view, be a great disservice to the public."

The submission of counsel, rejected by the court, was that accused's ability to drive the lorry without mishap was sufficient to create a presumption of sobriety which could not be overcome by subsequent medical evidence obtained after a lapse of three-quarters of an hour. Apart from the considerations already touched upon, this submission is vitiated by its ignoring of the most valuable evidence in all such cases, *viz.* that of the arresting officers who speak to the accused's behaviour and condition at the time of arrest.

forbearance in using his influence to dispossess the tenants. That threat to use his influence to their hurt but to his personal advantage was a crime. "Where the pressure consists," said Lord Thomson, "in creating in the victim fear that, unless he yields, his position will be altered for the worse, it is criminal unless the pressure sought to be exerted is recognised by the law as legitimate. . . . I am quite satisfied that the threat to use one's own position and influence as a lever to alter the position of another to his detriment unless that other buys immunity is a relevant ground of charge. What brings about this result is that the payment demanded is not a payment to which the claimant has any right arising out of his legal relationship to the victim."

Negligent Driving of a Tramcar

Robertson v. *McNamee*

Mrs. McNamee, a Glasgow tram driver, was charged before Scotland's only stipendiary magistrate in the Central Police Court with a contravention of section 48 of the Stage Carriage Act 1832, which enacts that "if the driver, conductor or guard of any stage carriage shall, through intoxication or negligence or by wanton and furious driving or by or through any other misconduct, endanger such carriage or any other person" he is liable to a penalty. The allegation against Mrs. McNamee was that she ignored traffic lights at a junction in Renfield Street and so involved her tramcar in a collision. At the hearing in the police court, a solicitor took exception to the charge on the ground that a tramcar was not a stage carriage and that, in any event, the complaint (which averred that the accused "did through negligence injure the said stage carriage") was not relevant. The magistrate upheld the objection and dismissed the case. The Prosecutor appealed. At the hearing of the appeal, counsel for both parties agreed that a tramcar was a 'stage carriage.'

In the course of his Opinion (with which Lord Carmont concurred but from which Lord Keith dissented) the Lord Justice General expressed regret that the elements of a statutory offence in relation to the conduct of mechanised city traffic should still require to be spelled out of the antiquated language of the relics of a statute passed 117 years ago to meet conditions which could only be reconstructed by the study of social history. The bulk of the provisions of the Act of 1832 had long since been repealed but for some reason section 48 still stood. Indeed, it had been invoked in England only last year. His Lordship ventured to doubt whether in the early days mere 'negligence' in controlling horses, in the modern sense of lack of due care and attention, was ever treated in Scotland as criminal. In the reported cases, the element of reckless disregard for the safety of others was invariably

stressed and characterised by such words as 'wanton,' 'furious,' 'wilful.' If there was a felt need for subjecting to criminal prosecution careless tram drivers who were merely momentarily 'negligent,' it should not be difficult to prescribe in clear terms adapted to twentieth-century conditions. It was sufficient for the disposal of the case that in construing a penal statute the court had no right and no duty to press ambiguous language or stretch doubtful inferences to the prejudice of an accused. The appeal must be refused.

Lord Keith, in a dissenting judgment, urged that the enactment of 1832 was conceived in the interests of passengers, members of the public and owners of stage carriages to protect them against certain conduct of servants in the operation of such carriages. The mischief struck at was (1) intoxication, (2) negligence, (3) wanton and furious driving, or (4) any other misconduct, if any of these caused injury to or endangered passengers, public or owner. Each of the four categories of conduct applied to all servants. The respondent's argument left intoxication or negligence to apply to guards and other servants but not to drivers, at least when driving. He could not understand such tenderness being shown by the legislature to drivers who had a major part in the safe conduct of a stage carriage. The Act appeared to him to be apt enough, in the altered circumstances of the present day, to cover negligence in driving a tramcar and he would therefore be in favour of supporting the relevancy of the charge.

The majority view, of course, prevails. The net result is that, in Scotland, prosecutors will revert to the practice of preferring a charge against tram drivers only where they are in a position to prove criminal recklessness as that term is understood at common law in Scotland.

'Red Petrol' Cases

In view of the recent amendment in the law, no more than a passing reference need now be made to the Edinburgh case in which a 'red petrol' charge against a motorist was held to be not proven. The expert evidence of two analysts was relied on by the prosecution to prove the presence of diphenylamine in the petrol found in the tank and tested by them, but, while agreeing that the sample tested gave a colour reaction indicative of diphenylamine, the analysts admitted that they were unable to affirm its presence positively and beyond all doubt because the same reaction would be obtained from certain other compounds of a group of substances of which diphenylamine was one. "In this case," said Sheriff Garret, K.C., "the prosecution argued that I should infer that diphenylamine was present and that the reaction could not come from any other substance. I do not think I can draw any such inference, nor do I think it was enough to show that the prescribed ingredient was probably present. The evidence must demonstrate a scientific fact and not merely provide the basis for an expression of opinion." Some days later, a similar result was reached in a case in Bromley, Kent. Although the analyst made it clear that the substances other than diphenylamine which would give a similar reaction were uncommon and unlikely to be found in petrol, the summons was dismissed.

Evidence Improperly Obtained

Lawrie v. *Muir*

When evidence of an offence has been obtained by some illegality or irregularity committed by investigating officers, can it later be tendered and accepted in criminal proceedings in respect of that offence? This important question (raised in certain previous cases, notably in the Perth murder trial some years ago, but never authoritatively determined) was referred to a court of seven judges in the case now reported. While the question was negatively answered in the special circumstances of the case, it must not be assumed that it would invariably be so and that such evidence would be excluded whatever the nature of the crime charged or of the irregularity involved.

Mrs. Lawrie, a dairykeeper in Portobello, was charged in the local Sheriff Court with using 31 milk bottles belonging to St. Cuthbert's Co-operative Association Limited without their permission. The Sheriff Substitute who heard the case repelled an objection to evidence obtained by two inspectors who had, in good faith, searched the dairy premises but who, in fact, had no right to make such a search. Against this ruling Mrs. Lawrie appealed, arguing that evidence obtained as a result of illegal entry, search or seizure or any other illegal or irregular act could not be admitted in a criminal prosecution. Dealing with this argument, Lord Cooper (who delivered the court's unanimous judgment) after reviewing the authorities, said that in principle it was clear that the law must endeavour to reconcile two highly important interests which were liable to come into conflict: (1) the protection of the citizen against illegal invasion of his liberties, and (2) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done should not be withheld from courts of law on any merely formal or technical ground. Neither of these aims of the law could be insisted on to the uttermost. The protection of the citizen was primarily protection for the innocent citizen against unwarranted, wrongful and possibly high-handed interference and the common sanction was an action of damages against the wrongdoer. The protection was not intended to protect the guilty citizen against vindication of the law. On the other hand, the interests of the State could not be magnified to the point of causing all the

safeguards for the protection of the citizen to vanish and of offering a positive inducement to the authorities to use irregular methods.

It was obvious, Lord Cooper continued, that excessively rigid rules as to the exclusion of evidence might operate to the detriment, not to the advantage, of an accused and might even lead to the conviction of the innocent; and extreme cases could be figured in which the exclusion of a vital piece of evidence from the knowledge of the jury because of some technical flaw in the conduct of the Police would be an outrage upon common sense and a defiance of elementary justice. An irregularity in the obtaining of evidence did not necessarily make that evidence inadmissible.

To apply the law to the case under review, his Lordship concluded, was not easy. The case was relatively trivial and singularly unsuitable as a 'test case.' The inspectors who exceeded their authority were not police officers enjoying a large residium of common law powers but the employees of a company acting in association with the Milk Marketing Board, whose only powers were derived from contracts between the Board and certain milk producers—of whom the appellant was not one. What tilted the balance against the prosecution was that persons in the special position of these inspectors ought to know the precise limits of their authority and should be held to exceed these limits at their peril. It was held that the inspectors acted in good faith but it was incontrovertible that they obtained assent to the search by a misrepresentation. In the court's view, the evidence should not have been admitted and the conviction secured on it could not stand.

The Blackburn Child-Murder Case

By C. G. LOOMS

Chief Constable, Blackburn County Borough Police

Foreword

Now that the Queen's Park Hospital murder has been solved, and the murderer dealt with according to law, it is felt that the facts of the crime, the wide scope of the enquiries and the volume of fingerprints taken, justify the case being written up, not merely for information of the crime itself but for the valuable lessons to be learned from it. The crime itself was of the most bestial and brutal kind, and shocked the whole country.

Of all places where one could feasibly imagine a child would be safe it would be in the Children's Ward of a hospital, and the fact that this four-year-old girl was snatched from her cot in the Children's Ward, raped and then brutally battered to death, not only aroused indignation but also produced a feeling of acute alarm in the minds of parents of young children. It also caused consternation amongst all Hospital Authorities throughout the country, and this alarm was increased by reason of the fact that it followed on two other child murders in Lancashire which had not been solved.

It was seen at the outset that this was not an ordinary case of murder, and when I arrived at the scene I realised that every possible endeavour would have to be made to solve this crime and that no question of local pride or prejudice could stand in the way of immediately summoning the assistance of New Scotland Yard and the Lancashire County Constabulary, particularly as both these Forces had been concerned in the Farnworth murder, and this might have been committed by the same person.

Within five minutes of the crime being discovered, assistance was requested from both these Forces, and the cleverest detective and scientific brains were immediately engaged in the task of clearing up this crime. The results have more than justified this action.

The other main point upon which I would make comment was the decision to finger-print the whole male population of Blackburn.

As will be seen from the report of the case, the main identification of the murderer rested on the finger-prints found on a Winchester quart bottle in the ward of the hospital, and after every male person in the hospital had been finger-printed without success, and after all persons having legitimate access to the hospital, such as visitors, tradesmen, workpeople, etc., had been finger-printed without the identity of the criminal being established, a conference was held in my office and the decision to finger-print the whole male population of the town was made.

As is well-known, the Police have no power to order a person to have his finger-prints taken, and it was, therefore, decided to notify the whole town of our intentions and to assure the public that immediately they had served their purpose the finger-prints would be destroyed.

The response was magnificent, and some *forty-six thousand* finger-prints were taken before those of the murderer turned up, and it is a significant fact that we had almost completed the finger-printing of the whole town down to the last hundred when the wanted finger-prints came to light.

This was only found after a most exhaustive check-up of the prints which had been taken with the official records at the Local Food Office, and had this check not been made the whole of the finger-printing would have been useless.

This case brings out more than ever the thoroughness which is necessary in an enquiry of this magnitude and the necessity for seeing that no stone be left unturned to ensure that no person has slipped through the net.

It will be seen that the Police had the whole-hearted confidence of the public in this town, and in order to retain that confidence, and to keep faith with the promise made at the commencement of the finger-printing, all the prints taken, with the exception of some five hundred which were applied for by the owners to retain as souvenirs, were publicly pulped in a paper mill in the presence of the Press, cameramen, cinema news-reel representatives and local citizens, and I am certain that should similar circumstances arise in the future this fulfilment of the promise made would result in one hundred per cent. co-operation from the public.

The crime was committed at Queen's Park Hospital, Blackburn, during the early hours of the morning of Saturday, May 15th, 1948, and in order that the difficulties facing the investigating officers might be appreciated it is necessary to describe the type of hospital concerned and its position in the County Borough of Blackburn.

Blackburn is an industrial town of some 110,000 inhabitants and is the centre of the cotton-weaving industry. The population occupies some 35,000 houses, most of which are of the working-class type built in closely set compact rows. The town itself lies in a hollow, and to the south-east, on elevated ground, stands Queen's Park Hospital overlooking the town below.

The hospital consists of a number of buildings with a total frontage of about a quarter of a mile, standing in grounds covering some 70 acres. A high stone wall forms the perimeter of the grounds, except in the north-west corner, where there is a disused quarry. At this point, due to erosion, the wall has collapsed and a temporary measure of protection has been afforded by the erection of a chestnut paling fence, secured by interwoven wire, and standing some six feet high.

To the ordinary person, not familiar with the hospital, the only apparent entrance is by the porter's lodge, where all persons passing through the gates are checked in and out, and the names, addresses and business of the visitors is recorded.

The average population of the hospital, including staff, is about 1,200 persons.

The ward concerned in the murder is known as C.H. 3, and is a small babies' ward situated at the extreme end of the hospital buildings, *i.e.*, furthest from the lodge entrance. It contained twelve cots, but on this particular night June Anne Devaney was the eldest of six patients occupying the ward.

This child, aged 3 years and 11 months, the daughter of a foundry labourer, was admitted to C.H. 3 Ward on May 5th, 1948, suffering from pneumonia. She was the only child able to walk and was singularly developed for her age. When in bed she could quite easily have been taken for a child of 6 to 7 years of age. She made good progress and her discharge had been arranged for Saturday, May 15th, 1948.

That morning, at 12.20 a.m., the night nurse in charge saw June safely asleep in her cot and then went to the kitchens adjoining the ward to prepare the children's breakfast.

About twenty minutes later she heard a child's voice and returned to the ward, but finding nothing amiss she went back to the kitchens. She later attended to a fractious child in the adjoining Toddlers' Ward, and at 1.20 a.m. she noticed a draught. She went to the porch doors and found them open, but at that time she did not treat this with any suspicion as the outer door had a faulty catch and often opened of its own accord when there was a strong wind. She then went into C.H. 3 Ward to attend to one of the babies and then noticed June was missing from her cot. The drop-side of the cot was still in the raised position and the child appeared to have been lifted cleanly out. The cots are specially designed to prevent the children from getting out and the top rail is about four feet from floor level. On the floor, underneath June's cot, was a Winchester bottle containing sterile water, which the nurse had seen safe in its usual place on a trolley at the end of the ward, some six yards away, only an hour earlier. She also noticed footprints on the polished floor, with an impression near June's cot, and she thought they had been made by someone in bare feet.

The nurse raised the alarm and a preliminary search was made by the hospital staff of adjoining wards and hospital grounds without success. The Police were notified at 1.55 a.m., and a squad of officers went to the hospital, where a systematic search of the grounds was carried out. At 3.17 a.m. June's body was found lying near to the boundary wall, some 283 feet from C.H. 3 Ward.

The Chief Constable and Police Surgeon were notified and arrived on the scene at 4 a.m. together with Detective Superintendent Woodmansey of the Lancashire Constabulary, and found the child lying face downwards in the grass. Her nightdress was partially lifted and was dirty as though she had been rolled about on the ground. Blood and fluid were exuding from the child's nose and vagina and it was obvious she had been brutally raped. Her left buttock had been severely bitten and she had been battered to death by being swung against the stone wall by her ankles.

The hospital was immediately sealed off and the assistance of New Scotland Yard and the Lancashire Constabulary was invoked. The Chief Constable of Lancashire, Sir Archibald Hordern, placed the whole of his considerable and modern forces at the disposal of the investigating officers, and his Assistant Chief Constable, Mr. W. W. Thornton, and

officers manning radio cars, etc., arrived on the scene almost immediately. A bloodhound was brought to the hospital and after it had been given the scent from the child's bed and the footmarks on the ward floor it cast about and eventually followed a trail leading directly to the child's body and no further. The trail was continued by police officers to the point where the boundary wall joined the chestnut fence and there a small gap was found in the wooden fence. By climbing through this gap it was possible to reach a small ledge skirting the edge of the quarry, which is some sixty feet deep, and by careful manœuvring to follow a path leading to a road, known as Queen's Road, which is referred to later.

Examination of the polished floor of the ward showed that someone had entered from the porch door and walked in stockinged feet across the ward to the far end, where the Winchester bottle had been picked up from a trolley. The footmarks then returned along the side of the ward and there were indications that someone had visited each of three cots in turn, ending at that occupied by June, where the bottle had been placed on the floor. The footmarks were found to be 10¼ inches long. After these had been photographed Mr. Jones of the Forensic Science Laboratory scraped the wax from off the floor in which the footprints were imprinted, and certain fibres were found embedded in the scrapings at the laboratory. These fibres were not visible to the naked eye. There were also signs on a window, overlooking a concrete area at the rear of C.H. 3 Ward and adjoining the ward, that someone had passed through, and certain fibres were found there and removed.

A special squad of officers under the control of Detective Chief Inspector R. McCartney was established in the hospital and they commenced to screen the movements of all the inmates, staff and patients alike, in addition to taking the finger-prints of all persons who had legitimate access to the ward.

A post-mortem examination of the child's body revealed that death was due to shock caused by a fractured skull and extensive injuries to the vagina and internal organs. It was also found that the bite on the child's buttock had been made before death, as had a bruise in each of the child's groins. The internal injuries were consistent with rape.

It is rather a coincidence that on the Friday night, May 14th, 1948, at about 11.15 p.m. some nurses in the Nurses' Home attached to the hospital and situated only about 100 yards from C.H. 3 Ward, detected a "Peeping Tom" at a bedroom window on the ground floor. He was asked by a nurse what he wanted and was told to go away, when he replied, "Hush, don't tell anyone," at the same time putting his finger to his mouth. This man was circulated as wanted for interview in connection with the murder and at that stage he was the main centre of interest. On Wednesday night, May 19th, 1948, however, he was traced and admitted having been in the hospital grounds near to the Nurses' Home on the night in question. His finger-prints were taken and compared with those found on the bottle, but as they were not identical this man was eliminated from the enquiry.

On Tuesday, May 18th, 1948, information was received from a taxi-driver that shortly before midnight on Friday, May 14th, 1948, he had picked up a man in the town centre, on a road which leads to the hospital, and had set the man down in Queen's Road, near to the quarry previously referred to. On leaving the taxi the man had run across the quarry and was last seen going in the direction of the hospital. The taxi-driver was unable to give a very full description of the man but expressed the opinion that he spoke with a local accent.

The same day a conference was held at the Central Police Office at which all the officers concerned in the investigation were present and the following conclusions were reached :

1. The finger-prints on the bottle were undoubtedly those of the murderer, as all males in the hospital and all persons having legitimate access to C.H. 3 Ward had been finger-printed and eliminated.

2. The wanted man was someone resident locally with a knowledge of the hospital and its environs, particularly in view of the taxi-driver's statement of the route taken by the man before the murder, and that presumed to have been used afterwards. Only a person with such knowledge could negotiate the edge of the quarry in the darkness.

3. The man was reasonably tall. A small person could not have taken the child cleanly out of the cot without dropping the cot sides, of which there was no evidence, nor would such a person be likely to have feet 10¼ inches long.

4. The person's clothing would be bloodstained.

Having arrived at these conclusions the question then remained as to how the finger-prints could best be used to trace the murderer. The examination of all prints filed in bureaux had been put into operation but it was appreciated that this would take several weeks. In any case the wanted man might not have been registered in the general criminal files and whilst this search was proceeding the trail would be going cold.

It was then that the bold decision was made to obtain the finger-prints of all male persons of 16 years or over who were known to have been in Blackburn on May 14th/15th, 1948.

The Mayor of Blackburn appealed through the local Press for persons to volunteer their finger-prints and the Chief Constable, through the same medium, assured the public that such prints would not be used for any other reason, and that when they had served their purpose they would be publicly destroyed.

Public feeling was running high and when the special squad of

officers, some twenty in all, made the first visits to houses in the vicinity of the hospital on Sunday, May 23rd, 1948, it was found the public were willing to co-operate to the full and only too anxious to help.

To ensure that the finger-print check would be systematic, it was carried out to a prearranged plan to obviate overlapping. Lists known as Electoral Registers were used to ensure that every one of the 35,000 houses in Blackburn was visited. These Registers are prepared each year on June 30th and are records of all persons over the age of 21 years entitled to vote in the parliamentary and municipal franchise. So far as Blackburn is concerned the Register is divided into fourteen voting wards or divisions, which are further sub-divided into three, four, or five sections, according to the size of the ward. The sub-sections are then set in alphabetical street and road order for further convenience.

Armed with supplies of finger-print cards and inked pads, the twenty officers were sent out daily to cover predetermined districts, in which they worked until every house in every street was covered. Whilst making these visits, enquiries were made to obtain information of persons not normally resident in the town but who were in Blackburn on the night in question. Each night such information, together with the completed finger-print cards, were handed in to the Officer in Charge of the squad.

The information obtained resulted in enquiries being sent to the Police in Australia, Singapore, India, Egypt, South Africa, Canada, the United States of America, almost every country in Europe, and to all parts of the United Kingdom, and in all of these places persons were located and finger-printed for elimination from the enquiries.

The finger-print cards were cancelled against the requisite entry in the Electoral Registers and afterwards sent to Chief Inspector Campbell for comparison. They were afterwards returned to Blackburn where each card was stamped " Cancelled " and then filed in strict alphabetical order at Police Headquarters.

At the same time other lines of enquiry were being pursued, having regard to the peculiar nature of the crime and its implications. In connection with these matters, for one reason or another, the following classes of persons were seen and finger-printed :

1. About 3,600 persons discharged from Mental Institutions in the Northern half of England, the nature of the crime suggesting a person of low mentality. Many of these persons had been convicted of offences involving indecency.

2. About 3,000 male persons of uncertain nationality : German prisoners-of-war ; and Polish Army personnel, residing in camps situate within a radius of 20 miles from Blackburn. This work was carried out by teams of Lancashire Constabulary officers and the line of enquiry was suggested by the biting of the child, not normal in

Great Britain but fairly frequently committed on the Continent in crimes of indecency.

3. Persons suffering from epilepsy or schizophrenia (split mind), who could possibly have committed such a crime during a temporary "black-out."

4. Persons suffering from venereal disease, so far as the confidential treatment of such persons would permit. It is a mistaken, but accepted, notion amongst certain sufferers of these diseases that sexual intercourse with a virgin or young child will effect a cure.

5. Persons known to commit or suspected of committing sexual offences contrary to nature, *i.e.*, homosexuals and the like. Many persons in this category were brought to the notice of the Police by anonymous letters.

6. All persons committing or attempting to commit suicide.

7. Casuals and other persons forming the "moving population" of the district, who might have stayed at the Casual Ward on some previous occasion and be familiar with the hospital.

8. All persons missing from home at the relevant period.

After about eight weeks the majority of the houses in Blackburn had been visited by the finger-print squad, but it was felt that finger-prints had still to be obtained from a substantial number of persons who were in Blackburn on May 15th, 1948. In order to be absolutely certain that every person in the Borough would be finger-printed, it was decided to compare the finger-print records, already obtained, with the records kept by the Local Registration Officer for the purpose of issuing ration documents.

This department had, between June 30th and July 18th, 1948, issued new ration documents to the population of Blackburn, but before they were handed over a reference leaf from the documents used during the previous year had to be completed and handed over in return. Unless this was done a new document was not issued. The reference leaves gave the name, address, date of birth, and National Registration number of the holder, and these were filed in strict alphabetical order at the Registration Office.

On July 18th, 1948, finger-printing was suspended and for the following three weeks the squad worked at the Registration Office. The system adopted was to compare each finger-print card with its counterpart in the registration files and when this had been done the remaining ration book reference leaves formed the balance of the population still required to be printed. These particulars were entered on special lists which were then examined at Police Headquarters and converted into new lists, separated according to the sub-divisions of the Borough wards.

House-to-house finger-printing was resumed on Monday, August 9th, 1948, but now the officers were furnished with lists giving particulars of specific persons whose impressions were needed to complete the finger-print check. As a direct result of this check, on Wednesday night, August 11th, 1948, one of the squad obtained the finger-prints of one Peter Griffiths, aged 22 years, at his home in Birley Street, Blackburn. His card was sent with others obtained on the same day to Chief Inspector Campbell on Thursday, August 12th, 1948, when it was found that certain of the impressions were identical with those on the bottle. Griffiths' name did not appear in the Electoral Register as he had not qualified for inclusion as a voter when the lists were last prepared on June 30th, 1947.

On Friday night, August 13th, 1948, Griffiths was arrested near to his home and brought to Police Headquarters, where he made a lengthy statement admitting his guilt. The same night, shortly before midnight, he was charged with the murder of June Anne Devaney.

The following morning impressions were taken of his finger-prints, palmar prints, and stockinged feet, and a comparison resulted in ten of the twenty finger-prints found on the bottle being identified as those of Griffiths.

Later in the day certain clothing was removed from his home, and his suit, which he had worn on the night of the murder, was recovered from a pledge office where he had pawned it on May 30th, 1948. This property was sent to the Forensic Science Laboratory at Preston where it was subjected to laboratory tests, with the following results, referred to in the same order as previously:

A. Fibres removed from the window were identical with those of the accused's suit.

C. Fibres taken from the child's body were found to be woollen fibres, ranging in colour between blue and violet and agreeing exactly with those of the suit.

D. Hair from the genitals was identified as being from a mature person. As the accused refused to give a sample of his pubic hair a comparison could not be made.

G. Nightdress. On this were found a number of wool fibres agreeing with those of the accused's suit.

K. Fibres taken from the foot-prints in the ward were found to be blue and red wool fibres matching with those in a sock removed from the accused's home. The sock was blue/grey in colour with a band of red around the foot.

When the accused's suit was examined, human bloodstains were found in sufficient quantity for grouping purposes on the lining inside the trousers at the bottom of the fly. This blood was classified as Group "A," the same as a sample taken from the child's heart.

Further traces of blood were found on the linings on both trousers side-pockets and on the whole of the bottom of the trousers fly. Bloodstains were also found on the jacket.

All this evidence was irrefutable proof that Griffiths was the wanted man and an examination of all the circumstances indicated that the conclusions reached at the Police conference were substantially correct, *viz.*, Griffiths was 5 feet 10½ inches in height; he was a local man with a good knowledge of the hospital grounds as it later transpired that from the age of 10 to 12 years he was a walking patient at the hospital in the very block of buildings from which he took the murdered child; and his clothing was bloodstained. In addition, he was afterwards identified as the man whom the taxi-driver had set down near to the quarry immediately below the hospital grounds on the night of the crime. Griffiths' signed statement also confirmed that he had taken the same route to leave the grounds after committing the murder.

On his final appearance before the Blackburn Borough Magistrates' Court, Griffiths was committed to take his trial at Lancaster Assizes, and on Friday, October 15th, 1948, he made his appearance there before Mr. Justice Oliver. He entered a plea of "Not guilty."

On that day the whole of the evidence for the Crown was presented and the defence appeared to accept it almost unreservedly, there being little or no cross-examination of Crown witnesses. The Court afterwards adjourned until Monday, October 18th, 1948, when the defence was opened and an attempt was made through medical witnesses to prove that Griffiths was a schizophrenic, and he was, therefore, insane when he committed the crime. It was also brought out in evidence that Griffiths' father was an inmate of a mental hospital for six months in 1918-19, and that the accused man's condition could be hereditary. This evidence was rebutted by a medical officer from Liverpool Prison, who stated that he had had Griffiths under almost continual observation since his admission to prison on August 14th, 1948, and he had reached the conclusion that he was sane when he committed the crime.

After an absence of only 23 minutes the jury returned a verdict of "Guilty" and Griffiths was sentenced to death.

He was hanged at Liverpool Prison at 9 a.m. on Friday, November 19th, 1948.

On Wednesday, November 3rd, 1948, in accordance with the declared intention of the Chief Constable, about 46,500 finger-print cards, several hundred finger-print forms and other documents, were pulped at a local paper mill in the presence of His Worship the Mayor of Blackburn, journalists, Press photographers, and a news-reel cameraman. Previously some 500 cards had been returned to persons making application for them following a Press announcement that they would be returned on application.

There have, naturally, been many criticisms by the "arm-chair

detectives" as to the course they would have taken had they been in Griffiths' position. They can be summarised and replied to as follows:

1. He could have refused to have his prints taken, in which case his movements on the night in question would have been subjected to very close investigation. As he could not have produced verification of his alleged movements he would automatically qualify as a major suspect.

2. He could have absconded, in which case he would still have qualified as a very strong suspect.

3. He could have committed suicide. As stated earlier all suicides were being finger-printed.

4. He could engineer an accident to his fingers. This angle was covered at local hospitals and subsequent enquiries would result in his becoming suspect.

It would appear that Griffiths took a chance when he volunteered his prints, and lost.

Valuable lessons have been learned from this enquiry and they are worthy of being recorded as a guide to others faced with a seemingly impossible task.

1. The importance of police officers ensuring that all material found at the scene of crime is not interfered with in any way. In this case the irresponsible handling of the Winchester bottle would have made the main clues useless.

2. The necessity for the immediate calling of experts to deal with the material found is proved in this case.

3. In cases of serious crime, where the feeling of the public is aroused, one can take advantage of the situation and seek their co-operation. It is appreciated that much useless information will be submitted but amongst it all there may be something absolutely vital, in this particular instance, the statement of the taxi-driver.

4. The value of perfect co-operation between Police Forces. In this case the co-operation of forces on a world-wide basis was sought and freely given.

[*In our next issue we shall print an illustrated account of the examination of clues in this case by Chief Inspector Colin Campbell.*—ED.]

The Influence of Topography on Police Tactics

BY CAPTAIN ATHELSTAN POPKESS
Chief Constable of Nottingham

HAS topography any influence on police tactics? Yes. It is of the first importance that the significance of the topography of any particular area be thoroughly appreciated. Bridges over rivers and canals, railway level-crossings, cross-roads and road junctions, etc., for instance, may have a direct and important bearing on the deployment of personnel. Examination of a typical urban area will make this evident at once. It will be seen how topographical considerations must in fact influence the tactical distribution of personnel.

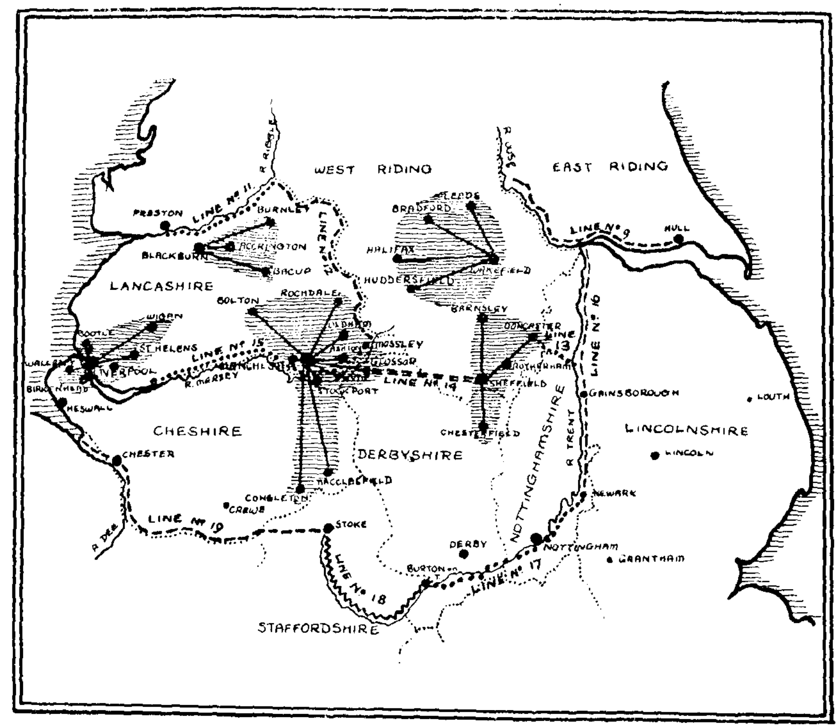
It is becoming increasingly necessary in these days of easy, swift, and comparatively cheap travel to keep on terms with wrongdoers by devising adequate tactical schemes to deal with them. Topography is significant in making such plans. Whether in a rural or an urban area, a large city or a small borough; whether in South Australia, Canada or the Gold Coast; the tactical considerations arising out of the physical characteristics of the countryside are common to all areas. Rivers, canals and railways are factors of prime importance in police operations. It is at bridges over, or tunnels under them, that supervision of vehicular traffic can most easily be maintained. They should therefore be key points in any tactical scheme.

As the Agility Scheme takes note of these things nationally, so should local tactical schemes be based on them. In the Agility Scheme the country has been divided up into Country Districts by a series of 'Lines,' each of which is numbered, urban localities situated on a 'Line' being considered part of it. In populous districts there are 'Areas.' Special arrangements have been made for the Metropolis. Places such as railway crossings, road junctions, bridges, etc., known as 'Key Points,' have been selected for special supervision along each 'Line,' and on the borders of any city, borough or town situated on and forming part of that 'Line'; also on the borders of each 'Area,' where other motor vehicles would be able to cross that 'Line' or enter that 'Area.'

Upon receipt of an 'Agility' message affecting any 'Line' or 'Area,' constables may be posted without delay at all 'Key Points' on or in it. By this means it will be possible in the event of a serious crime being committed to call out any 'Line' or 'Area' which may be of assistance in intercepting a suspected or wanted vehicle, or in tracing

any possible witnesses who may be travelling by road and who are believed to have passed the scene of the incident within a short time, whether before or after its commission.

For example, Lines 13, 14 and 15 cover the country from Doncaster to Liverpool, and include Sheffield with 4 boroughs round it, and Manchester with 9 boroughs round it. Lines 16, 17 and 18 follow the line of the River Trent from Newcastle-under-Lyme, through Burton, Nottingham, Newark, and Gainsborough to the Humber.



Lines 2 and 3 extend across England from Carlisle to Newcastle-on-Tyne, along the line of the River Tyne for much of the way. Any local tactical plan for Hull cannot fail to be influenced by the fact that the Humber Estuary makes exit to the south of the city, except by ferry, difficult. The fullest use is made of the topography of the area.

So far as the local Police tactical scheme of Nottingham is concerned, this is organised in 86 Foot Patrol Beats, superimposed over which are 9 Radio Patrol Areas. The function of the motorised patrols is to deal with crime committed with the help of wheels, and to answer urgent calls for assistance from the public.

As motorised patrols are designed to act with additional speed and flexibility, the Radio Patrol Areas in which they operate should be set out having regard to local tactical requirements. The same applies to Foot Patrol Beats. The more important and congested, the smaller the Beat. It is important that the boundaries between Foot Patrol Beats should, as far as is practicable, follow the ridges of high ground, rather than require foot patrol officers to climb hills unnecessarily. When it was suggested to the Chief Constable of a certain Midland city that pedal-cycle patrols should be more extensively used in that area, he replied : " When you are not riding up a hill in my city, you are riding down one ! "

Operational Centres should be sited at the junction of a suitable number of Foot Patrol Beats. In Nottingham it is 4 Foot Patrol Beats to each Operational Centre. It is desirable to locate Conference Points in such a position that they can command a good view of the surrounding area, and from which they can be approached and left in more than one direction. Such a Conference Point is the island in Canning Circus, from which roads radiate to Alfreton, Ilkeston, Derby, and the City Centre; it has outlets in seven directions.

The topography of an area should be studied, and the location and characteristics of the principal buildings, hospitals, municipal offices, etc., memorised. Districts and thoroughfares should be committed to memory, and the shortest route between two points noted. This knowledge may be of great value in answering an urgent call. To this end, a habit should be formed of observing the names of streets, etc., during the course of duty. Too often we pass through particular streets for a period of years, and yet are not certain of their names. A point should be made of knowing where all the roads in the vicinity lead to and come from. One never knows when this information will be of urgent value.

It is important to know the exact location in a street of a particular street number, so that it can be found at once if need be. This is especially so when patrolling in the dark, and lights must be used to identify the building.

Both Operations Room Staff and patrols should have a good knowledge of street topography. Much time can be lost in an emergency by having to consult a street directory. Often streets are named in groups, which makes them the more easily remembered. In one district in Nottingham we have: Sycamore Road; Laurel Street; Linden Street; Laburnum Street; Lilac Street; Lavender Street; Lily Street; Lupin Street; Rose Street; and Dahlia Street. In another part of Nottingham the roads are named after Yorkshire Dales, as Ribblesdale Road; Bedale Road; Ennerdale Road; Rydale Road; Coverdale Road; Mossdale Road; Cragdale Road; etc. In the City Centre are a group of streets named after writers: Shakespeare Street; Goldsmith Street; Chaucer

Street; Dryden Street; Addison Street; Tennyson Street; and Burns Street. In the Radford District of the city are localities named after parts of London: Clapham Street; Dulwich Road; Sydenham Street; Norwood Road; Brixton Road; and Croydon Road. In Lenton there are Abbey Street; Priory Street; Friar Street; Cloister Street. Sometimes streets are named after Councillors. But membership of the Council is often uncertain, and such names may lose their significance.

For many reasons police officers should have a good knowledge of local 'bus services, routes and termini. For instance, recently a man was seen by a member of the public to leave a house, the tenants of which were known to be on holiday. Radio vehicles were directed to the neighbourhood, but there was no trace of the offender available other than the description provided by the woman who had seen him. Persons living in the vicinity were requested to 'phone Police Headquarters if they should see him. When a woman 'phoned the Police that she had just seen the man board a certain 'bus, a radio patrol, knowing the stopping places on that route, intercepted it and an arrest was made.

The location of rivers, canals, roads and railways, providing as they do Key Points, have an important bearing on police dispositions in any local tactical scheme. A case in point is the River Trent, where it forms the southern boundary of Nottingham. The boundary line between borough and county is sometimes on the one side of the river and sometimes on the other. Sometimes it is in the middle of the river. It is obviously important that police officers should know how this boundary runs, in order that incidents may be promptly dealt with.

Railway level-crossings should always be taken into account when drawing up a tactical scheme. They may materially affect the speed and ease with which an incident may be dealt with. If a patrol happens only to be a few yards from an incident, but on the wrong side of a closed level crossing, it may as well be a hundred miles away from it for all the immediate practical value it will be.

Traffic lights present much the same problem as level-crossings, though a less physical one in certain circumstances, as when some years ago a pursuing radio patrol was held up at the traffic signals at the London Road/Canal Street intersection, and the thieves in the stolen vehicle disregarded the signals and for the time being got away. Police patrols must, like other motor traffic, conform to automatic traffic signals, though observing them may be the cause of the loss of precious time in an emergency. Police officers should therefore familiarise themselves with all routes in order to avoid them. Operations Room Staffs should take them into consideration when directing patrols to an incident. Tactical schemes must take them into account as a first priority.

The foregoing may be said to apply to Nottingham, as it does to any other urban area. The city has a population of approximately 300,000 and an area of 16,000 acres. It is $6\frac{1}{4}$ miles from north to south, and the same distance from east to west. From the Police point of view this is not the whole picture. The city is ringed with dormitory suburbs, the population of which for the most part work, shop, and find their relaxation in the city. The additional population (which may be assessed as high as 150,000) with which the City Police may have to deal is not provided for in the Police establishment of the city.

The main roads into the city are:

From the South: (i) Arkwright Street; (ii) London Road; and (iii) Wilford Road.

The tactical considerations of these routes are: (*a*) Arkwright Street and London Road must cross the River Trent at Trent Bridge; and (*b*) Wilford Road at Wilford Bridge—Account must be taken also of the Suspension Bridge.

From the North: (i) Mansfield Road; (ii) Hucknall Road; (iii) Alfreton Road; and (iv) Woodborough Road.

The tactical considerations of these routes are: (*a*) Mansfield Road and Hucknall Road converge on the city from the north; and (*b*) Alfreton Road from the north-west.

From the West: (i) University Boulevard; (ii) Derby Road; (iii) Ilkeston Road; and (iv) Alfreton Road.

The tactical considerations of these routes are: (*a*) They all come from Derbyshire; and (*b*) Derby Road, Ilkeston Road, and Alfreton Road converge on Canning Circus.

From the East: (i) Colwick Road; (ii) Carlton Road; and (iii) Woodborough Road.

The tactical considerations of these routes are: (*a*) They converge on the city from the east; and (*b*) the most important centres of population, such as Newark, Lincoln, and Grantham, are located east of the River Trent, the only crossings of which are at Newark, Gunthorpe and Trent Bridges.

Railways: The two principal railway stations in the city are the Midland Station and Victoria Station. The former is used chiefly for travelling to and from London, the Midlands, the West, South-West and North-West of England; also Scotland via the North-West route. Victoria Station is used chiefly for travelling to and from London, the East, North-East, and South-East of England; also Scotland via the North-East route.

It is important that Police Officers should be as conversant with the railway systems serving the city as with the main roads—in and out of the city. There are occasions when they must act promptly on information about the travelling public.

Patrol Boundaries. So far as the policing of Nottingham is concerned, there are at present 3 Foot Divisions (Central, Northern and Southern) and 1 Mechanised and Communications Division. Radio Patrol Areas are superimposed over Foot Patrol Beats, so as to ensure the greatest measure of co-operation between mechanised and foot personnel. The boundaries of the Foot Patrol Beats and Radio Patrol Areas may be seen on the Police map of the city.

Where county and borough Police areas impinge on each other, all Officers should be conversant with Police boundaries. The fewer Police boundaries there are, the better.

The Singapore Police Radio Patrol Cars and Radio Network

BY R. E. FOULGER

Commissioner of Police, Singapore

THIS note is written in order to show the value of Radio Patrol Cars during an emergency and because experience gained here may be of use elsewhere.

Public attention has been focussed mainly on the Malay Peninsula rather than on the island of Singapore. It is not the object of this article to retail the story of the activities of the Malayan Communist Party, but it is a fact that the first smoke-house was burnt down and the first grenade was thrown in Singapore; in addition violently seditious posters were put up and circulated. Firm decisions were taken by the Government followed by decisive Police action, and a state of Emergency was declared on July 13th, 1948. Raids, arrests and convictions took place, and the leaders of the Malayan Communist Party went underground. It was obvious, however, that the Party programme aimed at destruction of property and assassinations.

Two courses were open to the Police:

(*a*) The arrest of known members of the Party, and those who were assisting them.

(*b*) Wholesale searches of persons and vehicles for firearms, seditious literature, etc., thereby making it difficult for evildoers to move about and, at the same time, showing the public that the authorities were taking active steps and were competent to deal with the situation.

It is concerning the second of these activities that the Police Radio Cars and their teams have played so prominent a part.

July 1948 found the Radio Division of the Force equipped with old Army 22 and other Service sets and assorted equipment left behind by the Japanese on their surrender. The sets had been in use since 1945 and were rapidly deteriorating. Contact could not be guaranteed with cars that were more than ten miles or so from their base, and cannibalisation of sets in order to keep others in working order was quickly reducing the number available.

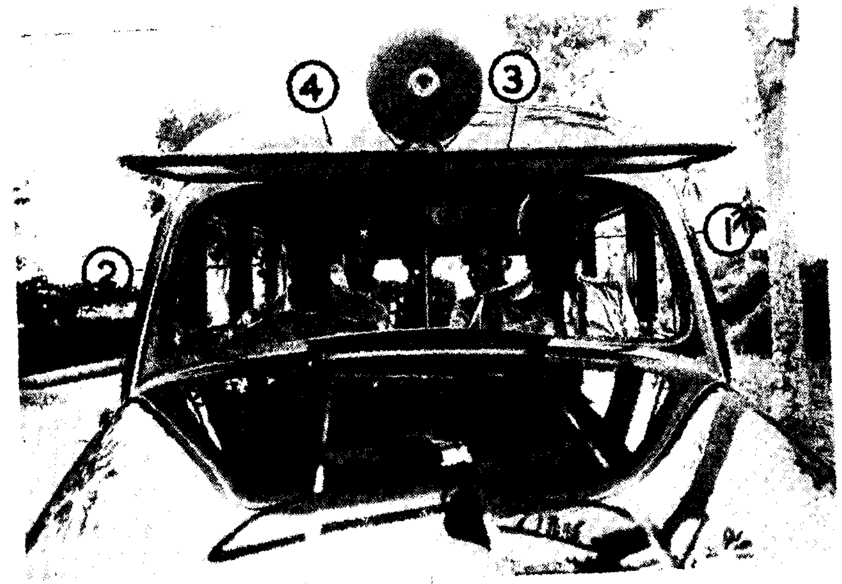
But crews were well trained. The photographs which are here reproduced show that a Radio Patrol team consists of four men under a Police Corporal. They work as a team whether they are searching a motor vehicle, staging a road block, checking persons in a coffee-house or raiding a house; each man knows his part and he knows what his colleagues are doing. All movements are carried out at the double and emphasis is laid on self-protection, for which reason men are encouraged to treat all suspects as potentially hostile until the contrary is proved. This may sound rather drastic but it has been necessary; this was a period when there were over 100 armed robberies each month, and special precautions were called for. The general public, who are certainly often momentarily startled and sometimes inconvenienced by these tactics, have played their part; they have accepted these activities and have shown appreciation of the work of the radio cars. The latest figures for a month's work (January 1949) give some indication of the extent of the value of these cars. In that month close on 44,000 persons were checked (identity cards, search for arms, etc.), nearly 1,400 road checks were imposed (a road block of 10-20 minutes), while 650 searches were made of coffee-houses. All this was in addition to the normal Police work—answering "999" calls, attending fires, accidents, etc., and accepting reports. There is no doubt that the Radio Patrol Cars and their teams have played a very big part in the suppression of crime and in deterring evilly disposed persons from taking action.

Towards the end of 1948 new equipment commenced to arrive and this coincided with the delivery of fifteen new vehicles.

The new radio scheme is similar to that employed by the Hertfordshire County Police: namely a multi-station A.M. V.H.F. system of radio telephony between control and patrol cars. To this system also are linked some of the fast Police launches and a number of isolated Police stations. The actual figures (at the moment) are eighteen cars (sufficient to maintain six to eight continuous patrols), four Police launches and two Police stations, while the fitting of C.I.D. "Q" cars and traffic accident investigation vehicles is in progress.

In addition to the above a fixed station Radio Scheme is on the point of being installed. The scheme will link Headquarter Stations with their sub-stations and will enable H.Q. stations, through main control, to contact C.I.D. or other key offices.

The delivery of teleprinters has commenced and the present



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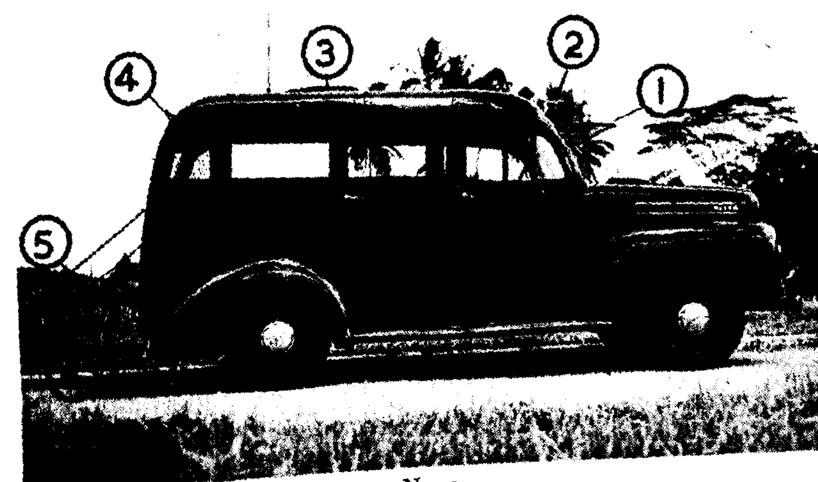

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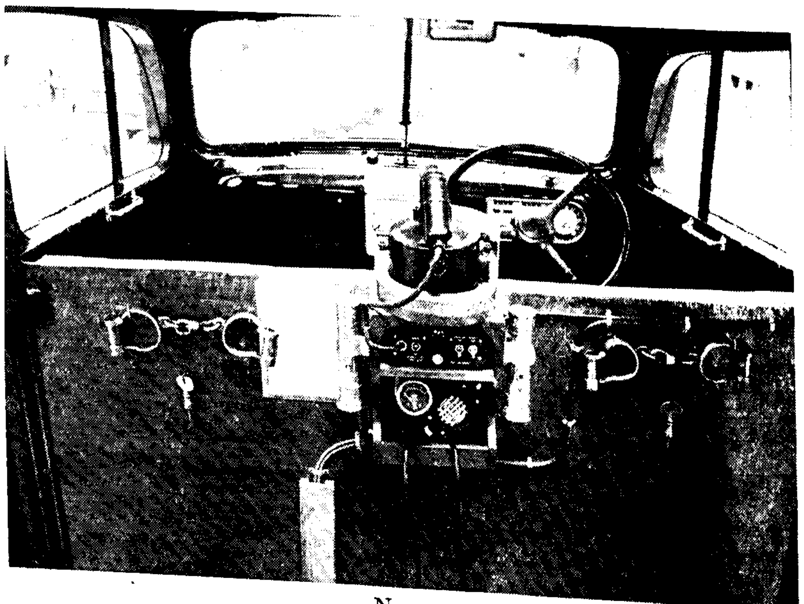

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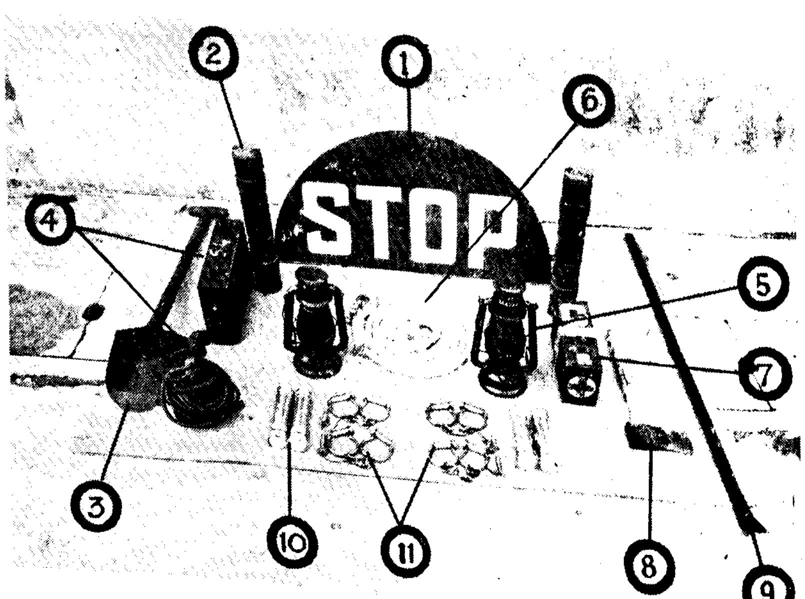

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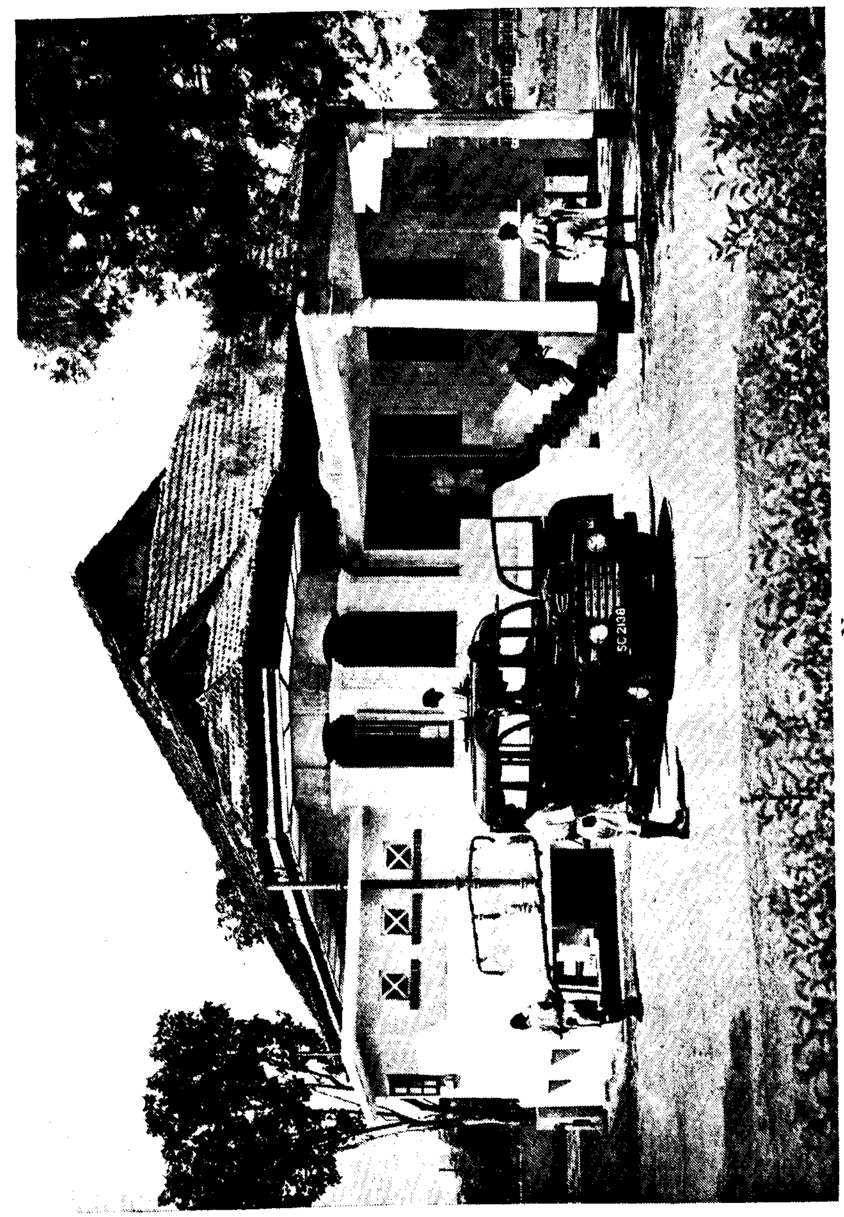

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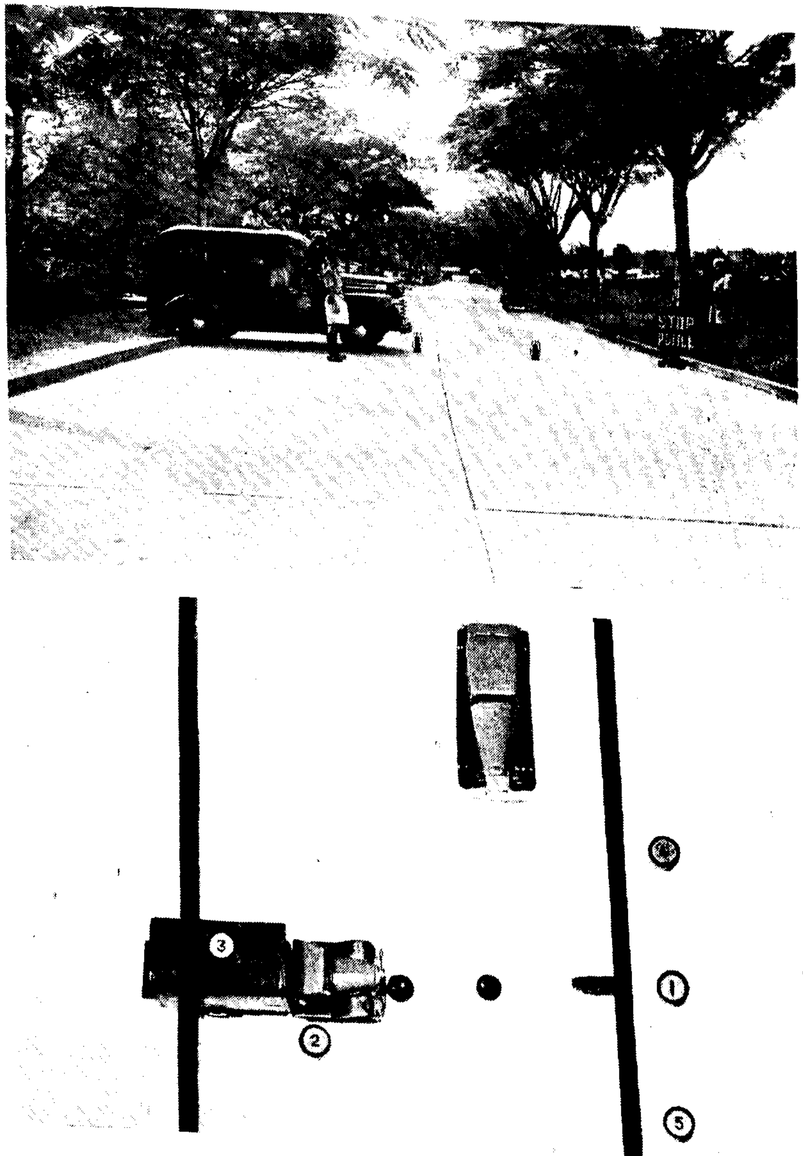

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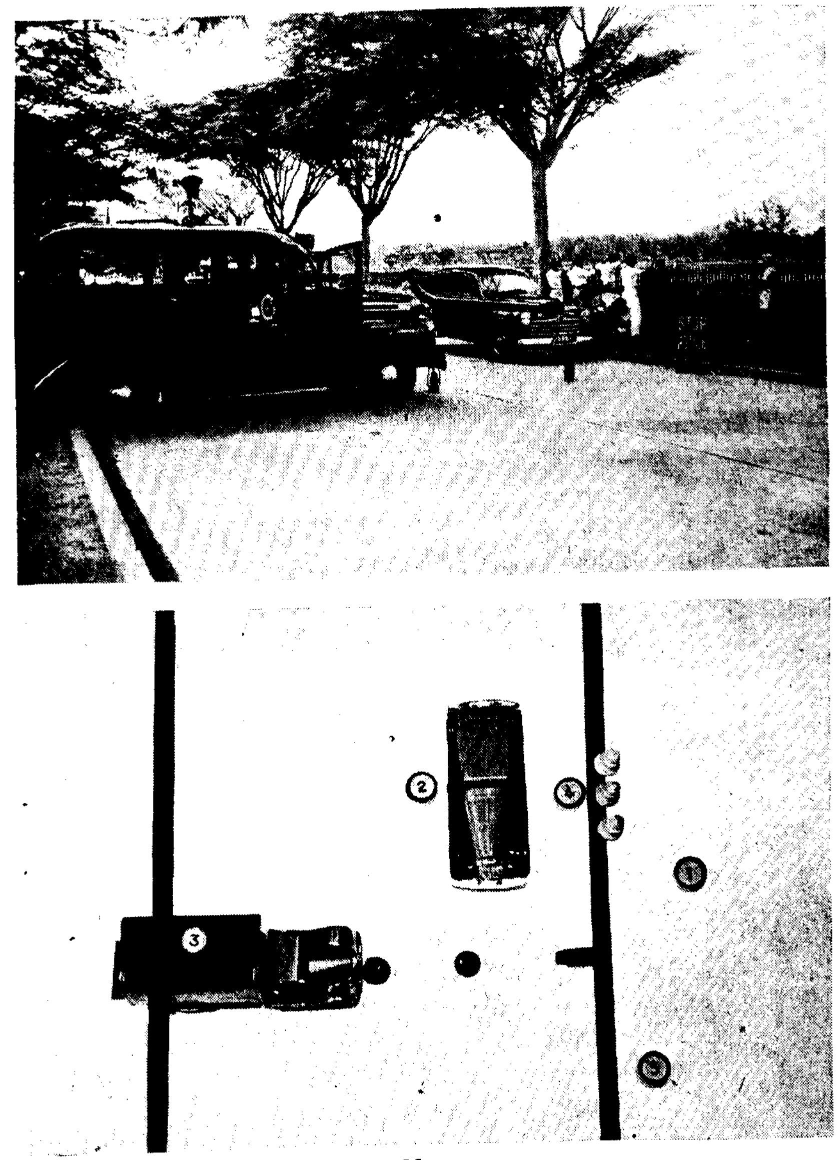

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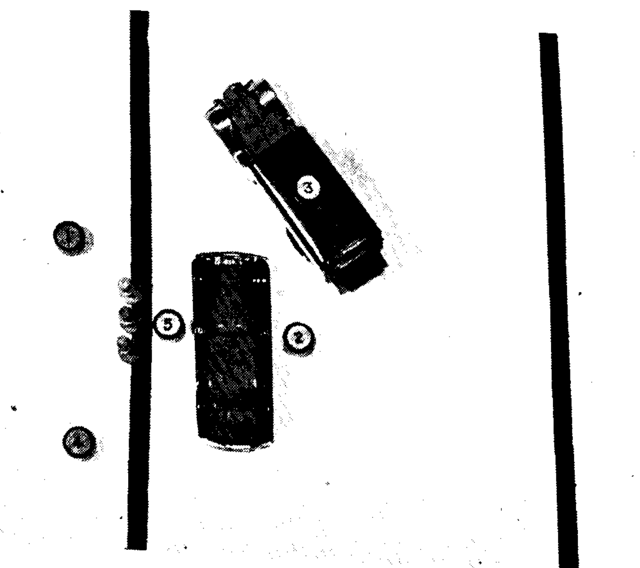

No. 8

No. 9

No. 10

Fig. 5

Fig. 3
Negative reversed

Fig. 2
Negative reversed

cumbersome method of the dissemination of information by means of group telephone calls will gradually be discontinued. The teleprinter system will also be routed through main control, where there will be an exchange.

The Burgot alarm system, installation of which has already commenced, is connected to the Operations Room on " 999."

When all these schemes have been completed, it is possible that the Singapore Police radio network will match that existing in any Force in the world. Fast launches varying from ocean-going vessels of 48 feet to small 30-footers for the inner harbour ; radio cars—Ford " 140 " commercial models fitted both as mobile Police Stations and, for patrolling, Ford V-8 " Q " cars ; C.I.D. vehicles ; traffic accident investigating vehicles and senior officers' cars, in addition to thirty-three of the forty-four Police Stations, will all be accessible by radio to main control. Where operations are in progress in localities inaccessible to radio cars, parties will be accompanied by walkie-talkie sets of two types—the one in contact with other walkie-talkie sets and the second with main control.

The series of photographs with diagrammatic explanations which accompany this note will, it is hoped, show that the answer to the Emergency problem has been—Rapid Communications ; Mobility ; Team Work.

ILLUSTRATIONS

No. 1

A RADIO TEAM CONSISTS OF FIVE MEN WHO ARE KNOWN BY NUMBERS AS FOLLOWS :—

No. 1.—Corporal i/c.
No. 2.—Driver.
No. 3.—Radio Operator.
No. 4.—Patrolman (seated beside No. 3).
No. 5.—Patrolman (rear seat).

The Team carry .38 revolvers while the N.C.O. i/c is armed with a Sten Gun in addition.

Each man has a raincoat, a steel helmet and a gas mask.

No. 2

1. Open Windscreen.
2. Loud-hailer.
3. Open Turret.
4. Hand rail.
5. Tail board down.
6. Towing hook.

The photograph shows the windscreen open to its fullest extent to enable the No. 1 to shoot forward. The siren button is on the dashboard in front of him. Windows are lowered as also are the protective expanded metal screens which operate independently of the windows.

The vehicle has four doors and an open back. When about to stop a vehicle No. 5 will stand ready on the tail board steadying himself with the hand rail.

No. 3

INTERIOR OF A RADIO CAR TAKEN FROM THE BACK SEAT.

The photograph shows the Control Unit, on top of which is mounted the Aldis Lamp. The batteries are below the Control Unit and do not appear in the photograph.

Handcuffs are carried to the left and right of the Control Unit, mounted on which are brackets to hold two of the four electric torches carried by the Team.

The framed document to the left of the Control Unit is an inventory of equipment carried by the vehicle.

The Turret is immediately over the Control Unit; the lid is made of aluminium and can therefore be opened by the operator with his head, leaving his two hands free to grasp Aldis Lamp and revolver.

No. 4

EQUIPMENT CARRIED IN RADIO VEHICLE

1. " Police, Stop! " Sign.
2. Smoke Grenades (2).
3. Shovel.
4. Aldis Lamp and Battery.
5. Red Lamps (2).
6. Rope with shackle.
7. First Aid Kit.
8. Hatchet.
9. Crowbar.
10. Torch-lights (4).
11. Handcuffs (4).

No. 5

A call of an urgent nature (" Help, Police ! ") has been received—the nature of the incident is unknown and precautions are taken.

The vehicle is turned round on entering ready to move off if necessary. The engine is running and the No. 2 stands ready to leap in and drive off. The No. 1 is running into the house to contact the caller while No. 5 covers his entry. No. 3 remains in the vehicle in a commanding position through his turret while No. 4 runs to the back of the house.

No. 6

METHOD OF CONDUCTING A ROAD BLOCK

The Radio vehicle is so positioned that it can move right or left in one movement to pursue a vehicle that fails to stop. If it moves to the left it will pick up all members of the Team except No. 4—if it moves to the right it will not normally pick up No. 5.

No attempt is made to stop a vehicle that shows an intention to rush the Road Block. Experience has shown that the Radio Car (with four of the Team on board) can be in pursuit in six seconds.

No. 7

The photograph shows a vehicle that has been stopped at a Road Block and with the occupants lined up for search.

As the occupants are brought under control, No. 2 has moved up to the vehicle. No. 5 to the right of the Radio Car has not left his position.

No. 3 has the suspects covered with his pistol and illuminated by Aldis Lamp at night. His set is on and he will hear any message to the vehicle through the loud-speaker.

No. 8

The photograph shows the positions of the men after the suspects have been ordered out of their vehicle.

No. 2 searches the vehicle while No. 5 searches the occupants.

No. 3 provides the illumination if at night while he and Nos. 1 and 4 guard the suspects.

No. 9

SEARCH OF A VEHICLE

A vehicle has been stopped in the manner shown in the photograph.

The No. 1 is not satisfied with the appearance of the occupants and he decides to do a thorough search.

The occupants are brought to the front of their vehicle while the Radio Car is driven to the side of the road so as not to cause an obstruction.

No. 1 and No. 3 watch the occupants while No. 2 searches the front part of the suspects' vehicle, No. 5 the inside and underneath, and No. 4 examines the boot and rear part.

No. 10

SEARCH OF A MOTOR BUS

The vehicle has been stopped in the manner shown in the photograph.

No. 1 covers the passengers through the grill by the side of the driver while No. 5 has placed himself at the door of the vehicle. No passenger is allowed to move until told to do so.

No. 5 orders the passengers out one by one while No. 2 searches them. No. 4 lines them up and watches them while No. 3 is watching through his turret with a commanding view of the proceedings.

Obtaining a Print from a Mummified Finger

By Detective Head Constable I. J. LIEBENBERG
South African Criminal Bureau, Pretoria

ON March 6th, 1949, at Klerksdorp in the Transvaal, the body of a Bantu male was found in the veld. The features were in such a state of decomposition as completely to impair their use in identification, and it therefore became necessary to obtain identifiable fingerprints.

To enable the S.A. Criminal Bureau to classify and search, the two thumbs, best preserved of the fingers, were placed in formalin and sent in. The use of formalin for this purpose is not in accordance with authorised practice.

Klerksdorp has a hot and dry climate, and this factor, combined with the use of the formalin, resulted in the thumbs being received in an advanced state of mummification. The surface contained deep and permanent furrows and the skin was as hard as stone, which prevented the taking of adequate fingerprints by the rolling method. Further, in the condition in which they arrived, photographs of the surface of the specimens would have been valueless. The problem, therefore, was to restore the finger-tips or so to relax them that adequate prints could be obtained, and several attempts were made before it could be solved.

The first effort was by boiling a specimen in an aqueous solution

Extradition of offenders is governed by treaties made between this country and most foreign states. The Extradition Acts of 1870, 1873 and 1895 provide legislation, but it is interesting to note that the formalities of extradition may be waived by the accused person if he so desires (*R.* v. *Corrigan* 1930, *W.N.* 235; 22 Cr. App. R. 106).

Persons who commit crimes in British possessions may be detained here and surrendered after formalities dictated by the Fugitive Offenders Act, 1881. Cases of these kinds are seldom encountered by Police and when they do occur are usually handled by specialist officers; Home Office memorandum No. A.51139, dated 1st December, 1903, provides appropriate advice on procedure.

In the more frequent instances of warrants received in England to arrest and surrender persons for offences committed in Northern Ireland, Scotland, the Channel Islands, or the Isle of Man, we are commanded and protected by magisterial authority (subject to endorsement, etc., of the warrant).

But what of crimes committed on a ship at sea, or abroad, in circumstances different from those already discussed? Police in seaports, at air termini and elsewhere, may be confronted suddenly with the problem of whether or not they have jurisdiction over such a transgressor. It may be advantageous, therefore, to summarise certain legislation relative thereto revealing not only powers of detention, but liability for trial and punishment in England.

CRIMES COMMITTED ON SHIPS

Admiralty Jurisdiction:—Crimes under Admiralty Jurisdiction were originally triable only by the Court of the Admiral (an officer entrusted by the Crown with charge of the sea) according to the *civil* law, but by the Offences at Sea Act, 1536, jurisdiction was transferred to Commissioners appointed by the King. Later, the Central Criminal Court was allowed to deal with *all* offences committed on the high seas and within the jurisdiction of the Admiralty (Central Criminal Court Act, 1836), and Courts of Assize and Quarter Sessions similarly empowered *if* an offender had been committed to, or imprisoned in, any gaol in a county or franchise within the limits of their respective commissions (Admiralty Offences Act, 1844).

This legislation refers to both British subjects *or* foreigners (*R.* v. *Anderson* (1868); *R.* v. *Keyn* (1876) etc.).

Note.—A "British ship"—To prove a vessel such, the usual practice is to produce a certificate of British Registry signed by the Registrar of Shipping (Merchant Shipping Act, 1894, S. 64), but by *R.* v. *Allen* (10 *Cox* 405; *R.* v. *Seberg*, *L.R.* 1 C.C.R. 264, "it is not essential to produce the register or a copy thereof; it is sufficient to show that she carries the British flag and belongs to British owners."

"Admiralty Jurisdiction," according to *Russell on Crimes* (8th Ed., Vol. 1, p. 33), "extends to offences committed on a British ship in foreign or colonial ports or waters. It is immaterial whether the ship is moving about the foreign waters, or at anchor therein, or moored to the land, so long as she is afloat and *below bridges*, at a part where the tide ebbs and flows and great ships go. All such waters are, for purposes of indictment and Admiralty jurisdiction, treated as part of the 'High Seas,' an expression which 'when used with reference to the jurisdiction of the Court of Admiralty, includes all oceans, seas, bays, channels, rivers, creeks, waters *below low water mark* and where great ships go, with the exception only of such parts of such oceans, etc., as are *within the body of some county*'" (see case of *R.* v. *Cunningham* (later) for explanation of latter phrase).

An apt example of Admiralty jurisdiction is contained in the case of *R.* v. *Carr* (1882). The accused was indicted and convicted of larceny on a British ship which, at the time of the offence, was moored to a quay at Rotterdam on the River Maas at a point about 18 miles from the open sea, but below bridges. (Also see *R.* v. *Coombes* 1785; *R.* v. *Lesley* 1860).

Territorial Waters Jurisdiction Act, 1878. This Act further extends the law already discussed by providing authority over *foreigners* (and H.M. subjects) committing offences on *foreign* ships on *the open sea* within British territorial waters. It should be observed that offences of this type committed *outside* these waters are not punishable by British law.

("On the high seas a ship whether public or private is considered for purposes of jurisdiction a part of the territory of the nation to which the ship belongs and subject only to the law of the flag which she is entitled to fly"—(*Russell on Crimes*, 8th Ed., Vol. 1, p. 47).)

There is a proviso in the Act (S. 3) that proceedings cannot be instituted without the consent of a Secretary of State if the offender is an *alien*.

"Offences" means any act which, if committed within the body of a county in England, would be punishable on indictment (S. 7).

"Territorial Waters" means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of the King's dominions, as is deemed by international law to be within the King's territorial sovereignty; for the purpose of any offence declared by the Act to be within Admiralty jurisdiction, any part of the sea within *one marine league* (nearly 3½ miles) of the coast, measured from low water mark, is to be deemed to be open sea within the territorial waters of the King's dominions (S. 7).

This legislation was enacted through failure in 1876 (*R.* v. *Keyn*) to convict the master of a foreign ship, who whilst passing in the open sea within three miles of the English shore, ran into a British vessel and killed a passenger, although the facts were such as to amount to manslaughter in English law.

N.B.—Particular attention must be given to the fact that, apart from the Act and definitions quoted, if a crime be committed on a *foreign* ship within "the body of a county," according to the outline of land nearby—*e.g.* in a harbour, estuary, etc., normal common law jurisdiction might be exercised.

In *R.* v. *Cunningham* 1858 (indictment for malicious wounding) the prisoners and the victim were American subjects on an American ship. The offence occurred whilst the ship was proceeding from Cardiff to an anchorage. She kept close to the Glamorgan coast during this time. The anchorage point, when reached, was between the coasts of Glamorgan and Somerset.

At the trial it was contended in defence that British jurisdiction did not apply, but in giving judgment Cockburn, C.J., said "We are of opinion that the place in question is within the body of the County of Glamorgan."

The situation regarding *foreign* ships within *territorial waters* may then be summarised thus:—

1. If an offence is committed on the *open sea* and within the waters—Secretary of State's permission required for prosecution of *alien offender*—no permission required to prosecute one of H.M. subjects.
2. If the ship is within "the body of a county," determinable by local evidence, common law jurisdiction obtains—*i.e.*, *no permission* required to prosecute *any* offender.

Merchant Shipping Act, 1894. The next relevant authority is S. 686 of the above which states "*any* Court in the King's Dominions which could try an offence committed on board a British ship within the limits of its ordinary jurisdiction may try a *British subject* charged with committing an offence on board any British ship on the high seas or in any foreign port or harbour, *or on board any foreign ship to which he does not belong*, or *an alien* charged with committing an offence on board a British ship on the high seas, if such person is *found within the jurisdiction* of the Court."

At first sight this would appear to be repetition of the legal provisions previously examined, but it is useful to note that jurisdiction is now given to *any* Court (Summary if necessary). It is also stated, in effect, that "if a British subject transgresses on board a *foreign ship* to which he *does not belong*" he will be liable to trial in this country. This appears to be the only possible exception to the rule already mentioned that a foreign ship is foreign territory whilst out of our territorial waters. It is difficult to quote a decided case, but presumably would apply if a British subject either stowed away in or by some doubtful

means came to be aboard a foreign ship to which he did not belong as a member of the crew or as a passenger, and committed an offence whilst the vessel was on the high seas or in a foreign port. Concurrent jurisdiction might exist, however, and be exercised by the State in which the ship is registered.

An illustrative case within the provision of this Section and handled by the writer, which enabled a summary court to adjudicate for larceny, was that of a gymnasium instructor on a British ship who stole personal belongings of passengers whilst in South American waters. He was arrested later whilst the ship was between Cherbourg and Southampton, and received three months' imprisonment from the Magistrates at the latter port.

CRIMES COMMITTED ABROAD

By Seamen, etc. S. 687 of the Merchant Shipping Act, 1894, provides that "all offences committed against property or person either *ashore* or afloat *out* of the King's Dominions, by any Master, seaman, or apprentice, who, when the offence is committed, or *within three months previously has been* employed in any British ship, are punishable and triable as if they were offences committed within Admiralty jurisdiction."

S. 689 empowers a British consul to detain such person and send him to the United Kingdom for trial.

The former section, it should be noted, renders an offender liable no matter in what part of the world the offence occurs. It is doubtful, however, if a *foreign* member of the crew of a British ship who committed an act punishable within the meaning of the section on soil *other* than Crown land would be so amenable (*Russell on Crimes*, 8th Ed., Vol. 1, p. 28).

Kenny, in his *Outlines of Criminal Law* (15th Ed., p. 489), disagrees with this dictum stating—"This is the only Statute giving English Courts jurisdiction over *foreigners* for offences committed in *foreign* territory" (vide W. T. S. Stallybrass).

By Government Officials. The Criminal Justice Act, 1948, S. 31, repeals certain of the provisions of the Criminal Jurisdiction Act, 1802, which formerly contained the appropriate legislation. (The latter might still be used to prosecute in England a British Colonial official who commits certain offences although a preponderate right of trial would undoubtedly exist in the Colony concerned.) The section states that a British subject employed under the Government *in the service of the Crown*, who commits, *in a foreign country*, whilst *acting or purporting to act* in the course of his employment, any offence which would be punishable on indictment in England, shall be guilty of an offence of the same nature and liable to the same punishment.

It is also provided that trial and punishment may occur in any place in England in which the offender is apprehended or is in custody.

A point of interest here is that the Criminal Jurisdiction Act, 1802, did not include the commission of felonies (*R.* v. *Shawe*, 5 M & Sel. 403) but this has now been remedied in the new Act by referring to "any offence punishable on indictment."

Homicide. The law allows liberal scope for trial of murder or manslaughter, it being provided by The Offences Against the Person Act, 1861, S. 9, that when a crime of that type is committed out of the United Kingdom, whether *or* not within the King's Dominions, and *irrespective of the nationality* of the *victim*, the offender, *if a British subject*, may be tried in any place in England in which he is arrested.

This power is well illustrated in the case of *R.* v. *Sawyer* (1815), when the prisoner was convicted of murdering the deceased at Lisbon. In this instance *both* were British subjects, although the conviction could still have been recorded had the victim been a Portuguese.

It should be noted, of course, that in most cases of this nature the offender would be arrested "in situ" and punished according to the laws of the particular country, or alternatively if he made his escape and returned to England, the Extradition Acts could be invoked. The latter would most likely occur in the event of the deceased being a national of the State concerned.

Where the felonious act is committed *abroad* or at sea but death occurs in *England*, the offender may be tried for murder, manslaughter, or being an accessory thereto, at the place in England where death actually ensues. Conversely, should the act occur in England and the death at sea or abroad, the offender may be tried *where the act took place*. (Offences Against the Person Act, 1861, S. 10.)

It appears that this section will only apply when the *offender* is a British subject (*R.* v. *Lewis*; *R.* v. *Jameson* (1896)).

Note.—In the event of death *not* occurring following a malevolent act, the provisions of legislation previously discussed should be remembered—*i.e.*, did it occur on a British ship? Was it committed by a seaman—or perhaps, was it committed on a foreign ship within British territorial waters? etc.

Perjury. The Perjury Act, 1911, S. 5, provides that if, for the *purpose of a judicial proceeding* in England a person is lawfully sworn under authority of an Act of Parliament:—

(*a*) In any part of H.M. Dominions or

(*b*) Before a British tribunal or a British Officer in a *foreign country* or within Admiralty jurisdiction,

a statement made by such person (unless the Act under which it was made otherwise provides) shall be treated as having been made in the judicial proceeding in England.

S. 8 of the Act further states that where perjury or subornation of perjury (punishable under this or any other Act) is committed outside the United Kingdom, the offender may be indicted at any place in England where found or in custody.

Bigamy. In this crime there is another exception to the principle that criminal jurisdiction is purely territorial. If the accused is *a British subject* and he contracts the second (*bigamous*) marriage outside the British Dominions altogether, he may be tried in any part of the United Kingdom where in custody (*Earl Russell's* case 1901). This is provided, however, that the second marriage was in a form acknowledged by the law of the place where celebrated (*R.* v. *Allen* (1872)).

This provision will *not* apply to a foreigner who marries on a second occasion outside the United Kingdom.

The Statutes previously considered are likely to be of most use in dealing with extra-territorial offenders. Others cover such obscure matters as treason abroad (35 Hen. VIII, C. 2, S. 1); burning or destroying H.M. Dockyards or ships (Dockyards Protection Act, 1772); enlisting in the service of a foreign state (Foreign Enlistment Act, 1870); causing injury, etc., by explosives (Explosives Substances Act, 1883); subversive activities (Official Secrets Act, 1911); and malpractice concerning elections (Ballot Act, 1872 *and* Corrupt and Illegal Practices Prevention Act, 1883). The Larceny Act, 1916, S. 33(4) exercises semi extra-territorial jurisdiction in creating an offence of receiving in England property unlawfully obtained abroad.

Piracy, being a crime of international gravity, is triable and punishable in any country, irrespective of the nationality of the offenders or where it was committed (even if within the territorial waters of another nation).

General

Usually the English Courts cannot assert their jurisdiction over acts committed elsewhere except in the statutory instances quoted, but through International Law the following are also given cognisance here:—

1. Where the act is initiated in another part of the British Empire and takes effect in England;
2. where the act is by a British subject and is initiated in a foreign country, but takes effect in England;
3. where the act is initiated in a foreign country and takes effect in England but is done by an alien—(*i.e.* if it is a *continuous* act).

Our guidance in such matters is derived mainly from decided cases, some of which are now quoted to illustrate:—

1. In *R.* v. *Munton* (1793), a Government storekeeper in Antigua,

admitted an indecent assault upon a female (over 16) earlier that evening. As no warrant was then in existence the man was placed in the military guardroom to await the issue of a warrant the following morning. This man had previous convictions for violence and there was no doubt he was a man who should be in safe custody until he could be tried. However, the following morning the soldier escaped from the guardroom and got clear away without being seen. A warrant was obtained as soon as possible and again the 'Tracker' was sent for. The dog was allowed to smell the man's clothing which had been left behind in the guardroom. Following the trail, the dog led the search party over about 50 yards of macadamed road and across fields to a high water-tower, then refused to go further. Police officers had scaled nearly to the top of the tower before the wanted man showed himself on the tank at the top, about 100 feet above the ground.

Recently the Chief Constable of Leicestershire, with kind permission of the officer Commanding the Royal Army Veterinary Corps, Melton Mowbray, arranged a demonstration at the Dog School at which there were about 50 senior officers and C.I.D. present. A discussion followed the demonstration, when keen interest was shown by many Chief Constables.

The dogs at the camp are all purchased by the War Office from private individuals and are sent to Melton Mowbray to be trained by an Australian Officer, Captain J. L. Radford, who has had considerable experience in Police Dog training, having worked with the Australian, Indian, Burmese, British South African and Palestinian Police. The dogs are not for sale when trained, but are sent to British Units generally overseas.

There are three types of dogs trained at the Depot; these are known as 'Trackers,' 'Guards,' and 'Mine Detectors.'

TRACKERS. These are generally alsatian dogs, and, as the name suggests, they are solely used for tracking. The dog will not attack the wanted man, but is more inclined to show an unusual friendliness towards him, ignoring others who may be standing with him.

Of course these dogs have their limitations. They must be given the scent of something belonging to the wanted person before they commence to track; for example, clothing or other article left behind at the scene. Further, they must be taken fairly quickly to the scene of the crime, as a hot scent lasts only for 12 hours and few last more than 48 hours. The scent, of course, may be lost by the fugitive going through water, travelling for some distance along a macadamed road, or escaping by vehicle.

GUARDS. These are also alsatians and are trained for patrol work. They can detect the presence of another person up to a distance of 300 yards away in the dark and warn the man in charge by raising the hair on the back of the neck. They will protect the master should he be attacked and will also prevent the escape of any person the master wishes to detain. They are trained to be fierce and will attack anyone when commanded to do so by their master. Because of this they should be handled by not more than four men, and when on patrol they are kept on a strong leash. They are not afraid of gun-fire.

Guard Dogs are trained to be entirely different in temperament from the Tracker, and, consequently, one dog should not be trained to do both types of work.

At the demonstration the stage was set to represent a tired policeman patrolling his beat about 2 a.m. The policeman had his dog on the leash when a 'suspect' dashed away from the rear of a building about 50 yards away. The dog saw the 'suspect' and attracted the attention of his master, who at once released him. A barrier was between the policeman and the suspect; it was easily cleared by the dog who, in seconds, pounced on his victim and dragged him to the ground in spite of a blank round of ammunition being fired. It did not savage the man, but held him until the arrival of his master. When the policeman came along the suspect was allowed to stand and the dog watched intently. The prisoner was being searched when he struck the policeman down in an attempt to escape, but this move was quickly foiled by the dog, who again dragged him to the ground. The man was finally led away, still guarded by the animal.

Many officers present agreed that the use of this type of dog would, to a large extent, deter assaults upon the Police and be responsible for the arrest of many a thief who had escaped in such a manner.

MINE DETECTORS. A dog, weighing not more than 40 lb., usually a cross labrador, is trained for this purpose. Their powers of detection of buried articles, whether metallic or otherwise, are uncanny, and no scientific explanation of this is forthcoming.

Previous to the exhibition a variety of articles had been buried, neatly, to a depth of approximately 2 ft. under the turf; these included a revolver, a paper cash-bag containing pebbles, a purse, and an empty sardine tin. Three dogs, each in a special harness, 'sniffed' their way carefully into the area, their escorts gently tapping the turf with a fine spike. Whenever the dog made a find he indicated this by sitting, and an indicator was placed to mark the spot. Later, when the turf at these places was dug, each revealed one of the buried articles.

Officers present were loud in their admiration, and I would like to compare the value of these dogs with the use of the Mine Detectors which have been recently issued to Regional Wireless Stations for the use of Police in the search of buried weapons.

Firstly, these dogs seem to detect articles which have been recently buried while completely disregarding anything else which may be under the surface of the ground, and secondly, they have no difficulty in finding non-metallic articles which create no reaction in the mechanical mine detector.

Questions regarding the application of the work of these dogs in relation to crime investigation were asked, but at the time no definite promise could be made as to whether the dogs could be loaned out to Police Forces generally. This point is being taken up by the Commanding Officer, and it is hoped that an agreement will be reached between the War Office and the Home Office to enable any Police Force to be able to call for assistance of the dogs if and when required, in the shortest possible time.

Court Procedure and the Criminal Justice Act, 1948

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(*Continued from page 308 of Vol. XXII (1949)*)

ADJOURNMENTS and Remands. The powers conferred on magistrates by s. 16 of the Summary Jurisdiction Act, 1848, to adjourn the hearing of a summary case have been materially changed. By virtue of that section a case may be adjourned to any date fixed by the court, whether or not the defendant has been convicted, and during the adjournment the defendant may be suffered to go at large or may be remanded in custody or on bail. Section 25 of the Criminal Justice Act, 1948, now provides that where a person has been convicted of an offence summarily (including an indictable offence tried summarily) the hearing may be adjourned for the purpose of enabling inquiries to be made, or of determining the most suitable method of dealing with his case. Any number of adjournments may be granted so long as no single adjournment is for longer than three weeks. During the adjournment the defendant may be at large, or in custody or on bail. Secondly, s. 26 provides that if a person is convicted of an offence punishable with imprisonment and the court is of opinion that an inquiry ought to be made into his physical or mental condition, it is under a duty to remand him for medical examination, either in custody or on bail, for a period not exceeding three weeks on any one occasion. If he is remanded on bail it will be a condition of his recognisance that he shall undergo examination by a doctor at a specified institution or place, or by a specified doctor elsewhere. The recognisance may, in suitable cases, provide for his residence in a specified place during the remand.

An important new power is that after a person has been convicted

by a magistrates' court and remanded, any bench acting for the same division may subsequently sentence or otherwise deal with him.

Considerable changes are made in respect of the places to which persons may be remanded or committed for trial or sentence, but they will not become effective until the new institutions are available. The provisions will then be as follows: Persons under fourteen years of age will be committed to a remand home. A person over fourteen but under seventeen will be committed to a remand home unless the court certifies that he is of so unruly a character that he cannot safely be detained in a remand home or of so depraved a character that he is not fit to be so detained. If he is over 17 but under 21 he will be committed to a remand centre, as will those aged 14-17 who are certified as mentioned. Persons committed with a view to a sentence of Borstal training (i.e. those aged between 16 and 21) will be committed to a remand centre. Until remand centres are available prison will be used for those in the 14-21 age group who would otherwise go to remand centres.

Borstal Training. It will no longer be necessary to prove previous convictions or criminal habits etc., to justify a committal with a view to a sentence of Borstal training. Section 20 lays down three requirements only—that the person convicted shall not be less that 16 but under 21 years of age, that the offence is one punishable with imprisonment, and that the court is satisfied, having regard to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal institution. Procedure as to committal to quarter sessions is unchanged, except that committal will be to the appeal committee outside the County of London and those boroughs having a separate quarter sessions.

Restriction on imprisonment. A court of summary jurisdiction may not impose imprisonment on a person under 17 years of age, and may not imprison a person under 21 unless it is of opinion that no other method of dealing with him is appropriate. Imprisonment includes imprisonment in default of payment of a fine. In future persons in the 14-21 age group may not be imprisoned (except as aforesaid) but will be sentenced to detention centres when the court has considered every other mode of dealing with them and considered that none is suitable.

A new kind of institution is the attendance centre, which convicted persons who would otherwise be liable to be imprisoned may be ordered to attend. The aggregate attendance may not exceed 12 hours and each period of attendance may not exceed 3 hours, regard being had to school or working hours. Penal servitude, hard labour and prison divisions are abolished.

Reception Orders. Hitherto police have often experienced difficulty in dealing with persons convicted summarily of offences and who appear to be insane. Magistrates' courts will now have power, on the evidence of two medical practitioners, to make a reception order for the reception and detention of such persons in an institution for persons of unsound mind.

Proof of conviction by finger prints. Previous convictions have hitherto been proved by production of a certificate of conviction, with verbal evidence that the accused is the person named therein. This method of proof remains, but a new method has been introduced. In future, it will be possible to give the necessary proof by means of three certificates—one from the Commissioner of the Metropolitan Police that the finger prints accompanying the certificate are copies of those of a person named in the criminal records as having previously been convicted; one from the governor of a prison or remand centre that the finger prints attached thereto are those of the accused; and one from the Commissioner of Police that the two sets of finger prints relate to the same person. If this evidence is challenged it must of course be substantiated, but otherwise the certificates will speak for themselves.

Taking of finger prints. An officer of police of rank not lower than inspector may apply to the magistrates for an order to take the finger prints of any person not less that 14 years of age who is in custody charged with any offence. If the order is granted a constable may use such force as is necessary to take the impressions. The new provision is in addition to existing powers, but when finger prints are taken under this new power they must be destroyed if the person charged is acquitted or is discharged under the Indictable Offences Act, 1848.

Evidence by certificate.

(*a*) In any criminal proceedings a certificate signed by a constable or a person having the prescribed qualifications (namely, a person registered as an architect, or a member of the Royal Institution of Chartered Surveyors, the Institution of Civil Engineers, the Institution of Municipal Engineers, or the Land Agents' Society), certifying that a plan or drawing made by him is of the place or object specified in the certificate and that it is correct and drawn to scale, shall be evidence of the relative position of the things shown on the plan or drawing.

(*b*) In any proceedings for an offence under the Road Traffic Acts, 1930 to 1947, or under any other Act relating to the use of vehicles on roads (e.g. the Highway Acts), a certificate signed by a constable that a person stated to him that a motor vehicle was on a particular occasion owned or driven by him, or belonged to a firm of which he was then a partner, or to a corporation of which he was a director, officer or employee, shall be evidence of who owned or drove the vehicle on the occasion in question.

(*c*) When a person is charged with stealing goods in the possession of the British Transport Executive, or receiving such goods knowing them to have been stolen, or with an offence under s. 12 or s. 18 or s. 33 (2) of the Larceny Act, 1916, or s. 50-56 of the Post Office Act, 1908, a statutory declaration by a person that the goods were despatched or received or not received, or that goods when despatched or received were in a particular condition, shall be admissible as evidence.

(*d*) Nothing may be proved by such certificates which could not be proved orally, and

(*e*) none of the certificates or declarations is admissible unless a copy has been served on the accused at least seven days before the hearing, or if the accused three days before the hearing gives notice that he requires at court the attendance of the signatory.

Multiple Summonses. The old rule—one information, one summons—is varied to permit of more than one information or complaint against the same person or persons being included in one summons. Each information or complaint will, however, continue to be dealt with separately, except when they are dealt with together by consent.

Persons unlawfully at large. Police powers are strengthened in respect of persons who, having been sentenced to imprisonment, corrective training, preventive detention or Borstal training, or having been ordered to be detained in a detention centre, or having been committed to a prison or remand centre, are unlawfully at large. A person so sentenced and who has lodged notice of appeal but does not (having been bailed) appear to prosecute his appeal, is a person unlawfully at large and the new section sets doubts at rest by giving authority for the arrest of such persons without a warrant.

Another point of difficulty is clarified by s. 67, which authorises a court to issue a warrant for the arrest of a person charged with or convicted of an offence, who fails to surrender to his bail.

Finally, any person who is required or authorised by the Act to be taken to any place or to be kept in custody, shall, while being taken or so kept, be deemed to be in legal custody. A constable taking or keeping such a person is given full power to act outside his constablewick as well as within it.

Persistent Offenders.

The old "Habitual Criminal" procedure ceased to be operative after April 18th, 1949, and is replaced by a system of dealing with persistent offenders which should simplify the work of police. Sections 21 and 22 introduce three new ways of dealing with such offenders. The first relates to a person not less than 21 years of age who is convicted on indictment of an offence punishable with two years' imprisonment or more, who has, since attaining the age of 17, been twice previously convicted (by any court) of an offence carrying that penalty on conviction on indictment. If the court is satisfied that it is expedient with a view to his reformation and the prevention of crime that he should receive training of a corrective character for a substantial time followed by a period of supervision if released before the expiration of his sentence, it may pass a sentence of not less than two or not more than four years corrective training.

The second mode of treatment relates to an offender not less than 30 years of age, who is convicted on indictment of an offence punishable with two years imprisonment and who has been convicted on indictment on at least three previous occasions since attaining the age of 17 of offences punishable with such a sentence, and was on at least two of those occasions sentenced to Borstal training, imprisonment or corrective training. In such a case if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period followed by supervision if released before the expiration of his sentence, it may sentence him to not less than five nor more than fourteen years preventive detention.

Thirdly, if a person is convicted on indictment of an offence punishable with at least two years imprisonment and he has had at least two previous convictions (of any kind) for which he was sentenced to imprisonment or Borstal training, or he has been previously sentenced to corrective training, then if he is now sentenced to twelve months' imprisonment or more, the court is under an obligation, unless having regard to the circumstances, including the character of the defendant, it orders otherwise, to order that for a period of twelve months following his release from prison he shall report his address to an "appointed society." If he fails to notify his address to the society then he may be ordered to notify the police.

In respect of all three methods of treatment the Fourth Schedule details the procedure relating to reporting at police stations while under supervision or duty to report. Further, if the prosecution proposes to prove previous convictions with a view to one of these provisions being used, it must give at least three days' notice to the court and the defendant.

In the case of *Rex* v. *Barrett* the Court of Criminal Appeal held that the object of s. 21, in providing for preventive detention, was to deal with the habitual criminals and to enable a court to impose a longer term than would normally be imposed. The sentence should be kept for those cases in which the court thought that a prisoner should, for the protection of the public, be detained in custody for a period longer than the term of imprisonment the court would normally impose. Corrective training, on the other hand, should be regarded as something in the nature of extended Borstal training, and if a prisoner's record

showed a tendency to lead a criminal life, the sentence should be substantial to enable real reform to be attempted.

The Court of Criminal Appeal in the case of *Rex* v. *Browes* (1949) 2 All E.R. 449, held that a person committed to quarter sessions for sentence under s. 29 (1) was to be treated for all purposes as though he had been convicted on indictment, and he was, therefore, subject to the provisions of s. 22.

The same court has given most valuable guidance on the procedure to be followed when proving previous convictions for the purpose of s. 21 (*Rex* v. *Dickson* (" *The Times* "), Nov. 1st, 1949). First, after a plea, or a verdict of guilty, a police officer should be called by counsel for the prosecution, who should prove that the officer had served on the prisoner three days before the trial notice of intention to prove previous convictions. Secondly, the Clerk of Assize or of the peace, should put to the prisoner the convictions mentioned in the notice, and obtain his admission or denial of them in open court. Thirdly, there must then be handed to the prisoner or his counsel a copy of the Prison Commissioners' report. When all that had been done, the proceedings would be in order.

Probation.

The provisions of the Act relating to probation came into force on August 1st, 1949, and were followed by the Probation Rules, 1949, detailing the administrative and procedural machinery.

Probation will now follow on a conviction by whatever court it is ordered. After conviction a court may, instead of fining or sentencing a defendant, do one of three things—make a probation order; make an order of absolute discharge ; make an order of conditional discharge.

A probation order is an order requiring an offender to be under the supervision of a probation officer for a period of not less than one, nor more than three years. It will no longer require a recognisance, although if a person wishes to enter into a recognisance for the defendant's good behaviour the court may make an order. A probation order may contain such requirements as the court may wish to impose for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences. It may also include requirements regarding treatment for mental health. No probation order or requirement can be made unless the defendant, being over 14 years of age, consents. If he is under 14 his consent is not required.

A probation order will not name any probation officer but will name the petty sessional division where the probationer resides, or will reside, and the petty sessional court for that division becomes the " supervising court." A failure to observe a requirement may be dealt with by the court that made the order; if that was a summary court then either that court or the supervising court will deal with it.

The Act also makes provision for courts dealing with persons convicted during the period of the probation order or conditional discharge, and introduces reciprocal provisions in respect of orders made in Scotland and England.

An order of conditional discharge is an order made after conviction discharging the prisoner conditionally on his committing no offence for a period to be specified in the order not exceeding twelve months. On conviction of a further offence during the period of the order the offender may be dealt with for the offence in respect of which the order was made.

An order of absolute discharge is an order made after conviction and carrying no obligations or conditions of any kind. It resembles what was formerly known as "Dismissed P.O. Act."

Damages or compensation up to a maximum of £100 together with costs may be awarded by a court of summary jurisdiction making any of the three kinds of order.

It is important to note that a probation order and an order of absolute or conditional discharge are deemed not to be convictions except for the purposes of the proceedings in which the order is made and are to be disregarded for the purpose of any disqualification or disability which otherwise would attach to a convicted person. Thus, assuming a case of driving an uninsured car was dealt with in one of these ways, no disqualification for driving could be imposed.

There is some division of opinion as to whether an endorsement is a disability for the purposes of this Act, and on the whole it would appear not to be a disability, so that an order following a conviction for, e.g., exceeding the speed limit, does not enable the court to avoid endorsing a licence, unless there are "special reasons," as those words have been defined, i.e. reasons special to the offence and not to the offender.

'Special Reasons'

By A Barrister

SECTION II (3) of the Road Traffic Act, 1930, lays down that on a second or subsequent conviction of driving a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, the convicting court shall exercise the power of ordering that the offender shall be disqualified from holding or obtaining a licence unless the court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other special reason, thinks fit to order otherwise. The power to disqualify may be exercised on a first conviction but must be on a second or subsequent conviction unless there has been a sufficient lapse of time or unless there are 'special reasons.'

Section 15 (2) requires the court to disqualify for at least six months a person found guilty of driving or attempting to drive or being in charge of a motor vehicle whilst under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle unless there are 'special reasons' for not doing so.

Section 35 (2) is again mandatory and requires the court to disqualify a person convicted under section 35 (1) of using, or causing or permitting any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of Part II of the Act.

In England it was not until 1946, when on a motion for an order of *certiorari* to quash an order of the Recorder of Leicester, the case of *Gabbitas* came before the Divisional Court, that any authoritative ruling was given as to the meaning of the words 'Special reasons.' In this case (110 *J.P.* 228) the Lord Chief Justice, giving judgment, held that when a court exercises its powers of not endorsing or not suspending a licence for special reasons, it should state what the special reasons are, and that the fact that the defendant is a first offender is not a special reason. Lord Goddard went on to invite the Police to appeal in cases in which the power was not exercised and in which there appeared to be no special reasons for not doing so.

The invitation of the Lord Chief Justice was freely accepted, and now, in spite of suggestions to the contrary, there seems to be little doubt what 'special reasons' means, although it may be difficult to imagine facts which would constitute special reasons in a case under section 15.

In *Whittall* v. *Kirby*, (1946) 2 *K.B.* 552, a lorry driver pleaded guilty under section 15 but the justices did not disqualify him because a licence was essential to his livelihood and there was no evidence of any previous conviction of a motoring offence. The justices stated that they had increased the fine ordered as they had decided not to disqualify. It was held that 'special reasons' must be reasons special to the facts of the offence not to the offender as distinguished from the offence, that hardship and a good record were not special reasons within the meaning of the Act, and that justices could not impose a more severe penalty as the price of refraining from disqualifying the offender. The Lord Chief Justice added the opinion that the test for 'special reasons' was the same under sections 11, 15 and 35. The case is of interest also as it directs that persons convicted of dangerous driving should not be dealt with under the Probation of Offenders Act.

In *Rennison* v. *Knowler*, (1947) 1 *All E.R.* 302, a case under section 35, the Divisional Court held that:—(i) whether it was open to a court, on facts found by them, to hold that special reasons existed, was a question of law; (ii) where an insured person neither informed himself of the provisions of his policy nor obtained advice as to what it covered, he had no reasonable grounds for believing that his policy covered something which it did not. A mistaken belief with regard to any fact, however honest, could not be regarded as a 'special reason' unless it was based on reasonable grounds; (iii) the belief of the court that the defendant would not offend again was not itself a special reason but might be taken into consideration when deciding whether to disqualify or not once 'special reasons' had been found.

In *Williamson* v. *Wilson*, (1947) 1 *All E.R.* 306, the respondent had been convicted of permitting her motor-car to be used on a road without a policy of insurance being in force. The justices, considering that disqualification was too severe a penalty, had not disqualified her from holding a licence. The Divisional Court had no difficulty in holding that it was not for the justices to say that a penalty which Parliament had imposed was too severe and that such a reason for not disqualifying could not be a 'special reason.'

Where, in *Lebrum* v. *Williamson*, (1947) 1 *All E.R.* 824, a garage proprietor made a proposal for a general trade cover for all vehicles used in connection with his trade and received a cover note from the insurance company holding him insured against third party risks for any vehicle used in connection with the motor trade, but where the policy subsequently issued was on the 'named driver' basis and was accepted by the garage proprietor, without being read, as full cover in accordance with the cover note, it was held on the facts that the proprietor had been misled by the insurance company, that it was reasonable for him to believe that his proposal for general cover was accepted and that there was therefore a special reason why he should not be disqualified.

Where a farm labourer ordered by his employer to drive a tractor over part of a highway did so, as he was used to do and without knowing that the particular tractor was not insured, it was held, in *Blows* v. *Chapman*, (1947) 2 *All E.R.* 576, that there were special reasons. Lord Goddard expressed the opinion that the justices might properly have dealt with the case under the Probation of Offenders Act and so have avoided the recording of a conviction.

Although it was admitted that the facts in *Quelch* v. *Collett*, (1948) 1 *All E.R.* 252, did not constitute special reasons for not disqualifying

the respondent it was held that the justices, having applied their minds to the question whether extenuating circumstances existed and acted on evidence before them, had properly exercised the discretion given them by section 1 (1) of the Probation of Offenders Act, 1907, in dealing with the case under that subsection. In this case the respondent suffered from an injury to the foot which necessitated the use of a motor-car to travel to and from his work. He bought a motor-car which had been advertised as taxed and insured. The car was in fact insured at the time of the sale and the policy could have been transferred to the respondent. The vendor had undertaken to do so and as a result the respondent honestly but wrongly assumed that he was covered by the policy at the time of the offence.

In *Lyons* v. *May*, (1948) 2 *All E.R.* 1062, the respondent sent his lorry to a garage for repair and directed its redelivery by the garage. His own policy covered the lorry only when driven by the respondent himself or by someone in his employ. He did not enquire whether the garage proprietor had a policy which would cover his driving of the lorry. In fact the garage proprietor had *no* such policy and consequently the respondent, in directing the proprietor to deliver the lorry, was guilty of permitting the lorry to be used on the road without a policy of insurance being in force. The Lord Chief Justice said: "The request that the lorry should be delivered to the respondent's premises was made to a man who, in the ordinary course and according to the ordinary commercial experience of people, would be covered by a policy of insurance because his trade would require him to have such a policy, *e.g.*, for testing and putting it on the road. We think the case must go back to the justices with a direction to convict, but with an intimation that there are ample grounds for the justices to find special reasons for not disqualifying the respondent from holding a licence under section 35 (2) of the Act."

Gardner v. *James*, (1948) 2 *All E.R.* 1069, is authority, if any was necessary, for not dealing with a case under the Probation of Offenders Act where there has been a deliberate commission of an offence, as where the defendant having assembled a motor-cycle takes it out on the road for test without any insurance policy.

Finally, *Duck* v. *Peacock*, (1949) 1 *All E.R.* 318, a case under section 15, shows that the fact that the person in charge of a motor-car stopped it as soon as he felt his incapacity is not a special reason for not disqualifying.

Regulation 55 (1D.) of the Defence General Regulations, 1939, uses the words "having regard to any special circumstances" in directing that the minimum fine provided shall be imposed unless there are special circumstances. In *Roberts* v. *Evans* (1949) 3 *C.L.* 211, the Lord Chief Justice laid down that justices before finding that such circumstances existed should hear evidence and not merely rely on the statement of the defending advocate. It is probable that this direction applies with equal force to 'special reasons' under the Road Traffic Act.

To sum up :—

I. Reasons must be special to the offence not to the offender (*Whittall* v. *Kirby*).

II. The justices must state the reasons (*R.* v. *The Recorder of Leicester, ex p. Gabbitas*).

III. Whether there are special reasons on the facts is a question of law (*Rennison* v. *Knowler*).

IV. A mistaken belief, unless based on reasonable grounds, is not a special reason (*Rennison* v. *Knowler*). But where the defendant is misled by an insurance company (*Lebrum* v. *Williamson*), or by ordinary commercial usage (*Lyons* v. *May*), or where an employee carries out his usual task not suspecting that there is anything wrong (*Blows* v. *Chapman*), there may be special reasons.

V. Hardship is not a special reason (*Rennison* v. *Knowler*), nor is the belief that the defendant will not offend again (*Rennison* v. *Knowler*), nor that the justices think the penalty too severe (*Williamson* v. *Wilson*), nor that the defendant is a first offender (*R.* v. *The Recorder of Leicester*), nor that the defendant stopped his car as soon as he noticed the effect on himself of drink (*Duck* v. *Peacock*).

VI. In proper circumstances the justices may deal with the case under the Probation of Offenders Act and so avoid a conviction and the necessity for disqualification; *e.g.*, where an employee carries out his usual duties without suspecting that there is anything wrong (*Blows* v. *Chapman*), or where the defendant has made an honest mistake (*Quelch* v. *Collett*), but not where there has been a deliberate offence (*Gardner* v. *James*).

Note.—Since the above was written the following cases have been reported:

Reay v. *Young*, (1949) 1 *All E.R.* 1102. Where there was no policy of insurance in force due to the fact that the driver was uninsured there may be 'special reasons' where (1) there was very little traffic on the road at the time, (2) the uninsured person only drove for a few yards, and (3) there was no risk of an accident.

Kerr v. *McNeil*, (1949) *N.I.* 19, (1949) 4 *C.L.* 363. There may be 'special reasons' where the owner of a vehicle gave his driver instructions and the necessary money to obtain a driving licence and subsequently directed him to drive without having ascertained that in fact no licence had been taken out.

The Probation of Offenders Act, 1907, has been repealed. Sections 3 to 12 of the Criminal Justice Act, 1948, now govern Probation. A

possibly unconditional effect of section 12 of this Act appears to be that a probation order or an order of discharge, absolute or conditional, under section 7 will no longer avoid the necessity for showing 'special reasons' against disqualification.

Filing in the Force

By Constable WILLIAM WOOD
Kent County Constabulary

It has been said that an efficient filing system is the key to an efficient Force. So this should be, for the modern Police Force to-day demands speed, and only an efficient filing system can speedily give the answers.

Filing in the Force has developed as the Force has progressed, but whereas the histories of the various Police Forces cover most aspects of the policeman's life and duty, the filing systems are not mentioned. It may be that they were the skeletons of the Force and in fact they still are to this day in some Forces. We must imagine, therefore, that in the early days of 1829 the first Home Office Circular was issued, marked No. 1.' After being read by the few to the many, this was filed by placing it on a new spike. You may say, "That is quite a good system, especially for those days." You are quite right—had it remained at one spike for all Home Office letters. We are too early for that, for to the letter were added all other letters, reports and notices of wanted felons, until the only sequence was the daily order in which they were received.

In the beginning this would work quite well, as the amount of reports per year and letters combined would perhaps equal one morning's post-bag to-day. The paper-mills, as we know them to-day, would not start for another hundred years. Reports were few and very far between. If a man was brought into the station on some charge, it was entered in a book as big as a counter. Details of the case were completed mostly on one long line across the book opened out. This was efficient recording if the indexing was completed correctly. No other filing was necessary.

As time went on so paper increased; people became more educated and the criminal did not lag behind. Letter-presses came into use. Copies of letters were kept in one book by the simple process of a book of flimsy paper being used for the copies of letters written in copying ink. The presses were elaborate machines, but they served the purpose until carbon paper came on the market. The filing method used in connection with the press book was to stick papers of the same subject

on to the original entry; but as paper increased this became impractic-
able as the books became unwieldy. The 'sticky-pad' then came into
use; the original letter, being written in copying ink, was rolled on to
the pad which left an impression, and blank paper was rolled on top of
it to produce a copy. The spike came into full swing again as a method
of filing. This time it was in duplicate enclosed in a large cardboard
folder which in turn dropped into a bigger cardboard container. By
now the subjects had been separated but they still mostly remained
'Reports,' 'Complaints' and 'Miscellaneous.'

Typewriters were used in business houses long before they
became an established part of the Force. I suppose this was mainly
because they were used exclusively at first by young women who
were known as 'typists.' Of course it was 'unheard of' to have women
employed in the Force. They would only 'get in the way,' 'cause
complications,' 'anyway this is a man's job,' and many more reasons
put forward to H.M. Inspectors of Constabulary, even up to the
years immediately prior to World War II. But the typewriters did
come into the Force without the women to start them off. Many a
one-finger exercise has been played, to the annoyance of some other
person laboriously writing a report. With them came the carbon copies
and the greater need for an organised filing system.

Paper work has multiplied a thousandfold to-day on its predecessor,
and with it have come hundreds of varieties of filing. The lone Home
Office letter of 1829 has increased to hundreds a year, issued by six
or seven departments of the Home Office, and most Forces have special
sections of the filing systems exclusively used as a Home Office Section.
This section was multiplied again during the last War, with special
instructions for A.R.P., Special Constables and War Time Defence
Rules and Regulations.

Like everything else in big business, the Americans go in for
'filing' in a big way. In America all firms supplying filing systems
will install it and train the operating staff free of charge, and I believe
this now applies to some firms over here. The most popular of systems
in America is the Decimal system which to the writer's knowledge
has been taken up by at least one firm in England. The system is
divided into subjects such as 'Summonses,' 'Cautions,' 'Reports,'
'Correspondence' and 'Home Office.' Summonses would take a
section of numbers, say, 1/1 to 26/1, 1/1 being a folder with twenty
summons reports beginning 'A' (names). A large stiff cardboard is
placed in front of each letter. It is slotted to hold thin cardboard
slips, buff-coloured slips giving the names of the first named on each
report immediately behind and pink slips under the same letter for the
additional names on reports when two or more persons have been
summoned on one report, The second folder for 'A' would be

numbered 1/2 and the third 1/3. When a subject is sub-divided, as in the case of Special Constables when there may be files for 'Allowances,' Beat Duty, Control of Traffic, etc., then the 'S' letter in the Home Office Section which may be numbered 350/1 would display a blue-coloured slip marked Special Constabulary 350/01/, the blue slip denoting that there was a special section behind, which was itself divided, 'Allowances' would be 350/01/1, Beat Duty 350/01/2, etc. Apart from Summonses and Cautions, most of the filing is under subject headings and can be broken down, say, as in the case of 'Firearms,' 'F' may be 88/1, the sub-division for Firearm Certificate Applications, the number would be 88/01/- (blue slip), the folders for persons under names commencing with 'A' would be 88/01/1, 'B' 88/01/2, Firearm Dealers would be on another blue slip for a division and numbered 88/02/1 for persons under names commencing with 'A,' etc. Each year the old files are replaced by new folders, the old ones being boxed, each box being numbered and the reference of the transfer being marked on the reverse of the stiff slotted cardboard. The slips are taken from the slots and pasted alphabetically in loose-leaf binders, the year of the files being marked on the outside edge of the binder. So much for this type of filing. It has its faults, but they are few. It is simple to understand, and providing there are good operators it is efficient. The only section not boxed annually is the Home Office which for obvious reasons is kept constantly in use.

The majority of filing systems in use in the Forces are based on Card Index. The cards being housed in separate cabinets from the files. The principle is mainly the same in each system, with as many cross references as possible used to ensure that all reasonable angles of the search are covered. Subjects are sub-divided and in large Forces the Divisional Letter supersedes the reference number when the whole Force has a standard system. The Home Office instructions, etc., are embodied in Force Policy and there is usually a Central Index office which dictates the filing to the Divisions.

This brings me to another side of filing, the recording of convictions.

In the days before the first signs of Centralisation came about, very few Forces bothered about previous convictions. The Vagrancy Act, 1824, Sec. 4, provided additional penalties for similar offences committed a second and subsequent time; but the circularising of these convictions, it will be easily understood, was not widely carried out. There were no such things as fingerprints for identification, and photographs being out of the question, the description was the only method to rely on. Hence the only record of previous conviction reliable was one in the same Court and one which had been recorded and indexed. Bertillon's system of identification from fingerprints showed the great need for some system of recording previous convictions efficiently, and from the massive books they went to the card system, first in ink and then the typewriter. It was the custom at first to record all convictions on cards for first offences, however trivial. It is so even to this day in some Forces, and I am not sure that this is not the best method as it certainly saves time in the end. But in a great many Forces the system adopted is to place the name for the first conviction on an index card, alphabetically, with a reference to the charge sheet, Multiple convictions are, of course, kept on cards in cabinets or cases, and should a person with a single conviction come before the Court a second time, the first conviction is extracted from the records of the charge. The name on the first index is deleted, suitably in red ink, showing the transfer to the other section or death, as the case may be. The name then goes on to the second set of index cards which are in a different colour. Whereas this system saves a tremendous amount of cards normally used for persons with single convictions who will never again come before the Court, it is offset by the fact that two sets of index have to be searched. In some Forces special cabinets are in use to file the cards. Shallow drawers allow the cards to be laid nearly flat in containers which show only the top tip of the card with the name thereon. This system does away with the index as the cards themselves are the index. Against this is the price of the equipment and space.

We have travelled a long way from the spikes to steel cabinets, from the days when it was nearly a crime to open the office window for fear of blowing papers away, to the days of electrical duplicating machines and comptometers. How little connection there seems between the 'Bill Sikes' of Charles Dickens to all the paper work both inside and out of the Police Office of to-day, to catch the modern stream-lined, flashy 'Spiv,' who haunts society now! The background of it all is 'Filing.'

Offences and Case Law

By A Borough Chief Clerk

IV.—PUNISHMENT OF PERSONS DRIVING MOTOR VEHICLES WHEN UNDER THE INFLUENCE OF DRINK OR DRUGS

(Continued from page 317 of Vol. XXII (1949))

" Under the influence of drink or a drug "

There has been considerable doubt from time to time as to the position where it is not possible to prove whether it is drink or drugs which have made a driver incapable of being in charge of a motor vehicle, but the case of *Thompson* v. *Knights* (1947) 111 *J.P.* 43, has made it clear that in such instances it will be sufficient if the charge or information alleges against the defendant that he was driving whilst under the influence of " drink or a drug " without specifying which is alleged to be the cause of the defendant's incapacity.

In the case of *Thompson* v. *Knights* (1947) the appellant was convicted by the justices with having been in charge of a motor vehicle whilst under the influence of drink " or " a drug, and he appealed to Quarter Sessions. His appeal was dismissed but Quarter Sessions stated a case for the opinion of the High Court.

The principle upon which the appellant relied was that stated in *Cotterill* v. *Lempriere* (1890) 54 *J.P.* 583, by Lord Coleridge, C.J., who said, " It has long been decided that where a man is convicted on a statute creating an alternative offence and the same penalty is imposed in either case, the information and conviction must state which offence is intended to be charged," and it was therefore argued on these lines that the appellant had been convicted of either of two offences, namely, of having been in charge of a motor vehicle when incapable by reason of " drink," or alternatively of having been in charge of the vehicle when incapable by reason of a " drug," but that it had not been stated which. It was further submitted that subsection 1 of s. 15 described six separate offences, *i.e.* driving under the influence of drink; driving under the influence of a drug; and that in respect of charges of attempting to drive and being in charge of a vehicle there were similarly in each case two separate offences.

Delivering judgment dismissing the appeal Lord Goddard, C.J., stated that in his opinion the section created three offences which were: driving when under the influence of drink or a drug to such an extent as to be incapable of having proper control; attempting to drive when under the influence of drink or a drug to such an extent; and being in charge of a vehicle when in such condition. The words " under the influence of drink or a drug " were merely adjectival, and descriptive of the substantive offence which was (1) driving; (2) attempting to drive; and (3) being in charge of a motor vehicle when incapable of keeping it under proper control.

In another case a motorist, fined at the Middlesex Sessions in October 1935, for driving a motor-car while under the influence of a drug, was stated to have collapsed in his car and to have been thought at first to be under the influence of drink. For the defence it was stated that defendant had had a thumb crushed by a hammer, and a doctor had prescribed a drug to alleviate his agony. Here it was stated there was nothing discreditable about the use of the drug; there was no suggestion of drug addiction, and the drug was taken on medical advice. But the defendant went wrong when, after taking what was evidently a powerful drug, he ventured to drive a car.

At Bournemouth Quarter Sessions on June 25th, 1945, a motorist appealed against a conviction by Bournemouth magistrates for driving a car while under the influence of a drug. The case for the respondent was that after a collision the appellant was examined and a doctor came to the conclusion that he was in a coma associated with the use of insulin. Medical evidence was given that insulin was a drug. It was admitted in cross-examination that insulin was not scheduled under the Dangerous Drugs Act nor as a poison.

The case for the appellant was that there was no proof of the unlawful influence of a drug. He was a diabetic and took insulin. He was not under the influence of a drug but under the influence of too little food. By taking insulin the appellant had been simply trying to restore himself to normal health in accordance with medical advice.

A doctor said that since 1939 he had treated the appellant for diabetes. His health had markedly improved. Witness had never seen him in a coma and was of the opinion that on the day of the accident the appellant had not had sufficient carbohydrates with his midday meal. Another doctor said that if the appellant carried out his present prescription there was no reason why he should not drive a car.

The appellant gave evidence that on the day of the accident he had not had his normal midday meal. He had a light lunch. During the afternoon he felt tingling in his fingers and took a lump of sugar as he had been advised.

The learned Recorder held that insulin was a drug within the meaning of the Act, and that the appellant was under the influence of insulin whilst driving his car because he had not taken sufficient carbohydrates to get the required balance. He considered, however, that justice would be served by dismissing the appeal on the conviction and varying the penalty by dismissing the case under the Probation of Offenders Act (109 *J.P.N.* 369 (1945)).

" to such an extent as to be incapable of having proper control of the vehicle "

Prior to the Road Traffic Act, 1930 " drunken drivers " were dealt with under the Criminal Justice Act, 1925, and great difficulty was caused by the decision of the Court of Criminal Appeal in the case of *R.* v. *Presdee* (1927), 20 *Cr. App. R.* 95, where the Court quashed the conviction of a motorist whom a jury had found " guilty of being incapable of driving a motor-car brought about by alcohol," adding, " that he was not drunk to the extent we should call a drunken man." This difficulty was overcome in the 1930 Act by the inclusion of the words " under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle."

The case of *R.* v. *Hawkes* (1931) 22 *Cr. App. R.* 172 (*C.C.A.*) decided that to support a conviction under s. 15 the jury must find not only that the accused was under the influence of drink or a drug, but that he was also under the influence to such an extent as to be incapable of having proper control of the motor vehicle which he was driving or attempting to drive, or of which he was in charge, and that a mere verdict " we find defendant guilty of being under the influence of drink," is insufficient.

" shall, unless the court for special reasons thinks fit to order otherwise . . . be disqualified . . . for holding or obtaining a licence."

The Lord Chief Justice in the case of *Whittall* v. *Kirby*, (1947) *K.B.* 194; 111 *J.P.* 1, stated that a " special reason " within the exception must be one special to the facts constituting the offence, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence, yet closely connected with the commission of the offence, and that in the case of a conviction for driving under the influence of drink or a drug it is difficult to visualise any " special reason " other than the administration of a drug to the driver without his knowledge.

Another case where it was held that there was no special reason for not imposing disqualification is *Duck* v. *Peacock* (1949) 113 *J.P.* 135, in which the respondent after having had several drinks drove his car for about ten minutes, when feeling dizzy he stopped, but left the engine running. He fell asleep and remembered nothing more until he was awakened by the Police an hour later. The magistrate considered that the fact that the respondent stopped when he was no longer fit to drive (either because the symptoms did not show until he got into the open air, or for some other reason) was a special reason for not disqualifying him for holding a licence; but on appeal by the prosecutor the King's Bench Division held that there was no special reason and remitted the case to the magistrate with an intimation that the respondent must be disqualified for the statutory period, Lord Goddard, C.J., remarking: " This is a question, not of driving, but of being in charge of a car. If what is suggested here were a special reason, it would mean that a man who had taken too much to drink so that he was unfit to manage the car or be in charge of it could escape the penalty of disqualification merely by stopping and going to sleep in the car. The court is not going to give any countenance to such a reason as that."

But in a Birmingham case a fortnight after the decision of the Divisional Court in *Duck* v. *Peacock* (above) (reported in *The Justice* *of the Peace and Local Government Review* of March 12th, 1949), one, Shooter, had been found guilty of being in charge of his car while under the influence of drink and a twelve months' disqualification imposed by the City Magistrates.

On appeal the learned Recorder announced that the fine imposed would stand, but that the disqualification would be removed since the defendant had not driven or attempted to drive the car while under the influence of drink. The difference between this and *Duck* v. *Peacock* was that Shooter, unlike Peacock, had realised his condition before he left the premises where he had been drinking. He had left his hat and gloves there (which the learned Recorder treated as a reason for holding that he had no intention of driving away); he had retired to his car to sleep; and the ignition key was in his pocket and the engine was not running.

Medical Examination

It is a well-established principle of English law that a person charged with a criminal offence cannot lawfully be examined by another person by methods involving personal contact, unless permission be given for such an examination, otherwise the examination becomes an assault. This matter was referred to in *R.* v. *Tunnicliffe* (*The Times*, February 15th, 1934), where the defendant was indicted for being in charge of a car while under the influence of drink. Mr. Justice Swift asked the police surgeon by what right he had examined the prisoner, and when told that the prisoner was informed that the gentleman was a police surgeon and expressed no unwillingness said, "The Police are entitled to ask a doctor to come and observe a man they have in the cells, but they have no right whatever to put him through tests unless he consents. If they say he is able to give consent, then they have no business to come here and say he is drunk, because drunkenness destroys consent."

The appellant in the Scottish case of *Harris* v. *Adair* (*The Journal of Criminal Law*, vol. 11 (1947) pp. 402, 403) was arrested, taken to a police station and there examined by the police medical officer who certified that he was under the influence of drink to such an extent as to be incapable of having proper control of a motor vehicle. The officer on duty at the station asked him if he wished to send any messages, but he was not advised of his right to have himself examined by a doctor of his own choice, although some five hours later he was examined by a doctor brought by his brother. One of the grounds of the appeal taken against his subsequent conviction was that it should be set aside because of the failure of the Police to inform the appellant clearly and in express terms of his right to have word sent to an independent doctor other than the doctor called by the Police. The High Court of Judiciary affirmed the conviction, being of the view that the failure to give express intimation, although unfortunate, did not warrant the quashing of the conviction secured on the competent and sufficient evidence tendered to the sheriff. Lord Moncrieff, however, expressed the hope that in future cases, before examination by a police doctor, direct evidence would be given to persons arrested on such a charge of their right to call on the services of a doctor of their own choice.

In the Scottish cases of *Reid* v. *Nixon*; *Dumigan* v. *Brown* (*The Journal of Criminal Law*, vol. 12 (1948), p. 191), after a hearing by seven judges of the arguments in these appeals, the court emphasised the need to apply to prosecutions under section 15 of the Road Traffic Act, 1930 (as to all other criminal prosecutions) those principles which were "designed to reconcile two important public interests—(*a*) the evidence of impeding the detection and investigation of crime, and (*b*) the assurance of fair play to the accused. No attempt could be made to lay down absolutely rigid rules for universal application—for cases of this type varied greatly in circumstances—but it was possible to indicate the procedure to be followed in the normal case—where the accused was "Neither comatose nor violent and disorderly, but had at least sufficient command of his faculties to appreciate his position and to behave with reasonable intelligence.

In such cases, the judgment proceeded, "before being examined by a police doctor, the suspect ought to be charged and cautioned in the usual way by the Police, who ought further specifically to ask his consent to medical examination and tests, and should make it plain that the result of the examination and tests may be used in evidence, and that he is not compelled to submit. The accused should further be informed of his right to summon a doctor of his own choosing, and afforded facilities for so doing, but the police examination is not to be delayed until that other doctor is present. The examination should normally proceed without the presence of police officers. Any interrogation of the accused by the doctor with regard to recent events should be directed solely to testing his memory and coherence and not to eliciting information bearing on his guilt, and any information bearing on his guilt which may be incidentally elicited must not be communicated to the Police. If consent to examination is refused, the fact of such refusal can be proved in evidence, but the police doctor, if summoned, should confine himself to observation without examination or test." The judgment went on to safeguard the right of a medical man, who reaches the conclusion that the accused requires attention, to take, "whatever medical measures he, as a doctor, deems appropriate." The court said nothing of the case "where the accused is so much affected by drink or a drug as to be incapable of understanding a caution or giving or withholding consent" except to remark that "no such case is likely to require for its disposal a narrow scrutiny of medical reports."

In the Court of Criminal Appeal it was argued on behalf of the appellant in *R.* v. *Nowell* (1948) 112 *J.P.* 255, that the evidence which the police doctor gave was inadmissible because of the following facts. At first, the appellant did not wish to be examined by the doctor, who asked him several times to let him examine him. The doctor was a little persistent and explained that it might be in the appellant's own interests that a doctor should be allowed to examine him. He then agreed to be examined, but with reluctance, and, as he himself described it, he "was very awkward about it." The evidence was that he was singing in the station and would not stop. Counsel for the appellant argued that there was such conduct as to render the doctor's evidence inadmissible because the doctor improperly examined a man who was refusing to be examined. But it was not suggested that the doctor used force to examine the appellant who was protesting against the examination. The Court said they would deal with the situation when force was used should it ever arise for decision. The doctor from beginning to end behaved perfectly reasonably in the interests of the person he was examining, and the mere fact that at one time he said "It may be better for you" or "It may be to your advantage that I should examine you" cannot be regarded as an inducement to do something so as to bring into operation the law which excludes confessions made as the result of persuasion, promises or threats.

In dismissing the appeal the Court referred to the Scottish case, *Reid* v. *Nixon* (1948) (mentioned above) "according to which it seems that in Scotland the police doctor is not regarded as an independent medical referee but as a mere hand of the Police. This Court can only say that it does not agree that that state of things exists in this country, whether it exists in Scotland or not. Our view is that the evidence of a doctor, whether he be a police surgeon or anyone else, should be accepted, unless the doctor himself shows that it ought not to be, as the evidence of a professional man giving independent expert evidence with no other desire than to assist the court."

Offences taken into consideration

In the case of *Rex* v. *Collins* (1947) 111 *J.P.* 154, the appellant had been convicted on two charges of receiving a stolen motor-car, and he appealed against conviction. In the course of his judgment dismissing the appeal Lord Goddard, C.J., said that a matter had arisen on which he considered it desirable to say something of which he hoped notice would be taken, with regard to the taking into consideration of offences under the Road Traffic Act, 1930 and 1934, which may involve on conviction disqualification for driving or the endorsement of a licence, when sentence is being passed for a different class

of offence. It appears that when the appellant was convicted the Police informed the Recorder that there was a warrant out against him for driving a motor-car while under the influence of drink, and the Recorder agreed to take it into consideration. The Lord Chief Justice remarked that if a man is charged on indictment with an offence under the Road Traffic Act for which he is liable to be disqualified and there is a second charge against him, the Court might take that into account; but the reason why in his opinion these offences under the Road Traffic Act ought not to be taken into consideration is because, unless there is a conviction of, for example, driving under the influence of drink, or of driving a car when uninsured, there is no power to disqualify the prisoner for holding a licence, and Parliament has ordained that, unless special circumstances exist (which is a matter with which the Divisional Court dealt at some length in the case of *Whittal* v. *Kirby* (1947) 111 *J.P.* 1), the person charged must be disqualified and in certain other cases the licence must be endorsed.

In the particular case of *R.* v. *Collins*, the Court thought that no harm might have been done because the appellant received a sentence of three years' penal servitude. None the less if the charge which had been taken into consideration had been inquired into, the Court might have considered that a period of disqualification for five or ten years might have been appropriate, or, if it had turned out that the man had been convicted two or three times before, the Court might have imposed a disqualification for life. Again, if a sentence of six months' imprisonment were passed in a particular case, it would be most unsatisfactory to take into consideration a case of driving under the influence of drink, because the period of disqualification must be for a year. Accordingly the Court laid it down that for the future offences under the Road Traffic Act for which disqualification for driving or the endorsement of a licence is imposed, are not proper cases to be taken into account when passing sentence for dishonesty or some other matter.

Correspondence

To the Editor, THE POLICE JOURNAL.

DEAR SIR,—I beg to write with reference to article "Court Procedure and Criminal Justice Act," in the POLICE JOURNAL, volume XXII, No. 4.

On page 308 you state that offences dealt with under section 28 (1) of the Criminal Justice Act, 1948, are not subject to Costs in Criminal Cases Act, 1908.

Has the writer overlooked *Hastings & Folkestone Glass Co., Ltd.*, v. *Kalson*, 1948?

When Section 28 of the Criminal Justice Act, 1948, was passed no one knew actually what "Indictable Offence" meant in law. There had been no ruling. There was a difference of opinion as to what the A-B offences were to be regarded as. The Criminal Justice Act, 1948, made it perfectly clear that Section 28 (2) was to be subject to the Costs in Criminal Cases Act, 1908.

On November 18th, 1948, the Court of Appeal in *Hastings & Folkestone Glass Co., Ltd.*, v. *Kalson*, ruled that the A-B offences were Indictable Offences. Therefore according to Section 1 (1) (b) Costs in Criminal Cases Act, 1908, I believe that Section 28 (1) is covered as to costs.

The case quoted has many bearings on a policeman's powers.

Yours faithfully,
E. BURSLEM.

Police Office, Stalybridge, Cheshire.
November 24th, 1949.

Our Contributor writes :—

The writer has fallen into a trap which has caught many others.

In the first place, *Hastings & Folkestone Glass Co., Ltd.*, v. *Kalson* was not concerned with any statutory definition of " indictable offence," but with the interpretation of the articles of association of a company. Then again, the decision of the Court of Appeal had no relation to the Criminal Justice Act, 1948, but related to a decision of a Judge made before the Act had become law.

The Criminal Justice Act, 1948, makes cases dealt with summarily under s. 28 (2) cases to which the Costs in Criminal Cases Act, 1908 applies. Without that provision it would not apply. If Parliament meant the Act of 1908 to apply to offences dealt with summarily under s. 28 (1), it would have said so. As it is we must follow the provisions of the Costs in Criminal Cases Act, 1908, s. 1 of which (as amended) relates to " a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, or under the Criminal Justice Act, 1948, s. 28 (2) " Our interpretation of " indictable offence dealt with summarily under the Summary Jurisdiction Acts " must then conform to the Criminal Justice Act, 1925, s. 24 (3) which reads, " Any enactments in force at the commencement of this Act which relate to summary trial of indictable offences . . . shall . . . be construed as applying to the summary trial of indictable offences under this section. . . ." Thus, the Act of 1908 applies only to the offences set out in the Second Schedule of the 1925 Act and those coming under s. 28 (2) of the 1948 Act.

The Colonial Police

The following appointments are announced by the Colonial Office :

CLARK, J. H. HARVEY, Superintendent of Police, British Honduras.	Senior Superintendent of Police, Tanganyika.
FAIRLEIGH, A. R., Superintendent of Police, Mauritius.	Assistant Superintendent of Constabulary, North Borneo.
FOLEY, T. J., Assistant Superintendent of Police, Grenada.	Deputy Superintendent of Police, St. Lucia.
MAXWELL, A. C., Commissioner of Police, Sarawak.	Deputy Commissioner of Police, Hong Kong.
MOORE, J., Sub-Inspector of Police, Hong Kong.	Assistant Superintendent of Police, Hong Kong.
POPPY, A. J., Superintendent of Police, Kenya.	Senior Superintendent of Police, Tanganyika.
SHAW, A. A., Sub-Inspector of Police, Hong Kong.	Assistant Superintendent of Police, Hong Kong.
WHANT, L. R., Assistant Superintendent of Police, Hong Kong.	Superintendent of Police, Hong Kong.
WRIGHT, W., Chief Inspector of Police, Kenya.	Assistant Superintendent of Police, Zanzibar.

THE POLICE JOURNAL

VOL. XXIII, NO. 2 APRIL-JUNE, 1950

Quarterly Commentary

OAKSEY REPORT, PART II

THE Report of the Committee on Police Conditions of Service, Part II, opens, as is customary, by reproducing the warrant of appointment. This was dated May 12th 1948. The signatures to Part II appear over the date October 31st 1949. It must be remembered, however, that this is Part II and that considerable time was devoted to the preparation of the more important and urgent Part I. The time devoted to the matter by this Committee indicates, as indeed is indicated by the Report itself, the amount of research and careful consideration given to the matter. The second part of the Report contains less spectacular recommendations than its predecessor but, as we forecast in a previous commentary, it might well be found that in the long run the recommendations are of greater importance as they deal with matters of long-term policy.

A considerable portion of the Report is devoted to the important matter of housing and accommodation of the Police. The Committee reviewed what has been done and also what has not been done, but although they devote much space to the matter very little new seems to have come out of their enquiry and, indeed, their recommendations seem to take the matter very little farther than it was before they sat. Members of the Force who are in urgent need of a house may think that although the Committee were sympathetic to their needs the recommendations amount to little more than a pious hope.

Considerable space was also given to the question of police canteens. Outside the Metropolitan Police and a few of the other larger forces very little attention was given to this aspect of welfare in pre-war days. Indeed, in many police stations the arrangements for the men to have meals during the course of duty were, to say the least, extremely crude. The rationing system and the shortage of food have forced most police authorities to make better arrangements in the same way that employers of large numbers of people in industry were compelled to take some steps. Generally, however, the arrangements have been made in rather a haphazard sort of way and now that the Oaksey Report has brought the matter to the forefront it will be possible for something to be done on a more official and permanent basis. There can be no doubt that proper facilities for the provision of meals and the taking of meals in police buildings contribute largely to health and the general well-being of members of a Force, particularly those who work the beat and are exposed to the elements.

It will be impossible in a short commentary of this kind to deal with all the recommendations which the Report contains. It might be that but for the fact that the General Election had intervened many of the recommendations would have been dealt with by regulations before this article appeared in print. We propose, in our later issues, to select a few of the important but less prominent points which have been made and deal with them in full.

Among the matters which are most controversial are those of the procedure of appointment and discipline. These matters, as is so often the case in the British way of life, have been reached by a process of evolution. There is no logical reason why one procedure should be appropriate for county forces and another for cities and boroughs. So far the Committee found themselves on common ground, but the decision they had to make was whether they should recommend an entirely new system or whether the counties should be brought into line with the cities or the cities with the counties. The recommendation in effect is that the county system should, with suitable adaptation in detail, become the general rule. Before this regulation can be implemented legislation will be necessary, so it is not likely that this step will be taken in the immediate future.

The Federation were active in putting forward their views that the safeguards they see in the practice followed in cities and boroughs should be applied to the forces generally. The Chief Constables take the view that the procedure in cities should be the same as that in the counties. The County Councils' Association would, presumably, take no active part in the matter; for as far as they are concerned the change would not be important; but the Police Authorities for the cities and boroughs are, we understand, taking a very firm stand on the general principle that the recommendations introduced mean another whittling down of their powers. The issue is not very important in its relation to appointment and as far as disciplinary matters are concerned there are, of course, arguments for and against. We have always taken the view that a Watch Committee, which usually consists of twenty or more people, cannot be an ideal disciplinary body, and although such committees usually have among their numbers members of the legal profession and justices of the peace, it is inevitable that the bulk of the people are wholly untrained in sifting and assessing the value of evidence.

The Oaksey Committee consider and put forward very cogent reasons in support of their views that a chief constable should be in the position of a commanding officer, and, subject to appropriate safeguards by way of appeal, should be the disciplinary authority for his Force.

The Committee recommend a rather elaborate procedure for dealing with disciplinary charges which are, in the main directed to ensure that the Chief Constable is placed in a position where he can exercise his judicial functions without the bias which might arise through a previous knowledge of the facts of the case he is to try. It is recommended, too, that the appeal machinery should be extended to include all cases where there is a finding of guilt. The Report contains a number of tables, some of which indicate how disciplinary cases have been handled in the past and from one of these it appears that if the Committee's recommendations are accepted and the Chief Constables of cities and boroughs become the disciplinary authority, the actual alteration in procedure will be very small indeed as in most cases in practice the power has already been delegated to them. A feature disclosed by Table 1 which is rather surprising and which gives food for thought is the disparity between the number of defaulters in the various types of forces. For example, the number of men punished per thousand in county forces in 1948 was 13·0 whilst in boroughs in the same year it was 51·8, in the City of London 9·8 and in the Metropolitan Police 6·7. Another feature of interest is that the punishments inflicted dropped by nearly half between 1938 and 1948. It might be that the difference between counties and boroughs is accounted for by the fact that the county policeman works very much more as an individual and is given much more scope than his colleague in the borough who has to work to a much more definite time table and carry out instructions in much more detail.

The recommendation that the height standard should be reduced to 5 ft. 8 in. is not very surprising as this had been adopted in certain forces to bring the force up to strength. The application of the rule will, of course, remain a matter for the discretion of Chief Constables and we feel it unlikely that unless there is a considerable dearth of recruits many Chief Constables will be willing to drop their standard to the new minimum.

We were interested in the comments of the Committee on the Aberdeen experiment. The English Police system has for years stood on the foundation of the beat, and whilst this method of police supervision has its drawbacks and has been criticised for producing boredom, prominent persons interested in the Police and in the enforcement of the law have on many occasions paid high tribute to the part played by the beat constable. Any system which contemplates such a radical change as does the Aberdeen experiment will, of course, attract attention. The Oaksey Committee were so interested in it that a working party was set up to advise them on its technical aspects. The Committee were very guarded in their recommendations and said that whilst the scheme may not be suitable for general adoption the experiment provides a challenge to the Chief Constables of all other forces to study the problem for themselves. Chief Constables have, of course, been studying the problem for years and many innovations and alterations have been introduced; for example, the old system of fixed beats has, in general, been abandoned for discretionary working and police boxes have been introduced. Some forces have experimented with coupled beats during the most boring hours of the early morning—two men working two beats together. Some publicity has recently been given to the experiment introduced by the Chief Constable of Plymouth and this will be watched with interest. All these experiments have been in the nature of modifications or adaptations of the fundamental system; but the Aberdeen experiment was, of course, something much farther in its effect than this. We hope, with the Oaksey Committee, that the experiments will continue and that everything will be done to reduce the undoubted boredom that beat work on occasion presents.

"The Blue Lamp"

Much of the work of the Police is performed in the public eye, and the glare of publicity has a healthy influence on it. Inevitably much of its work is performed behind the office screen, and the mass of the people can only conjecture what happens there, realising, when they pause to think about it, that there must be another side of the picture besides the familiar one of the constable on traffic duty or point duty and the detective officer in the witness box repeating the cliché "In consequence of information received." In former days no attempt was made to publicise the work of the Police, indeed there is still a school of thought directly opposed to such action. In recent times, however, certain Chief Constables have explored the idea and have come to the conclusion that the relationship between the Public and its servants, the Police, may be improved by a little judicious advertising. In some places this has taken the course of a police section in a municipal exhibition, in others the Public has been asked to help in the task of reducing crime by removing temptation. The latest effort is by the Metropolitan Police who have co-operated in the making of the film *The Blue Lamp*. We suppose this film could be classed as a thriller, but even so it has a real educational value and we recommend all our police readers to see it. There is little doubt the film will attract large audiences and this will be all to the good, for the film portrays the Police in a rôle which can do no harm but much good. We do not think the picture has a very high recruiting value except to the few who are looking for a life of thrills. Young men of this type who select the Force as a career will be quickly disillusioned, for although *The Blue Lamp* is

true in many ways it necessarily depicts selected moments in the life of those in the principal rôles and omits to show the hours of faithful service in the less spectacular but more common tasks, such as beat patrols.

We liked the canteen scenes and the little asides which show so truly and well that the policeman retains his sense of humour and, despite his stolid appearance, remains a very human man.

We repeat, we consider the film really worth while. The younger constable may well find food for thought in the scenes which provide the highlights. Would he when placed in the same circumstances, as he might well be at any moment, act as the elderly constable did when confronted with a desperado with a revolver? Had he been in the detective's shoes when he had "shadowed" the girl to her hovel (incidentally, not too well done) would he have rushed in in response to her screams or would he have called for assistance? Maybe the film, or others like it, will in due course become available for instructional purposes at police training centres; the system provides a pleasant method of teaching a lesson but is probably impracticable on the grounds of cost.

The Police and the Law

Serving of Notice of Previous Convictions: No Caution Necessary

TWO matters of practice arising under sections 21 and 23 of the Criminal Justice Act 1948 were referred to by the Lord Chief Justice at the sitting of the Court of Criminal Appeal on December 12th 1949. He said that the Court had been told that certain chief officers of police had raised the question whether, when a notice had been served on a prisoner regarding previous convictions and he was asked whether he admitted them or not, it was necessary to administer a caution to the prisoner. In the opinion of the Court it was not necessary that a caution should be given when the appropriate notice had been served.

The second point related to a question which had been raised by borough sessions whether or not a police officer was entitled to give evidence of the contents of a notice which he had served on a prisoner, without giving the prisoner notice to produce the notice which he had been given. The Lord Chief Justice was surprised that the question had been raised because it was well known in connection with the law of evidence in relation to documents that no notice to produce a notice need ever be given. If it were necessary to give notice to produce a notice, notice to produce the notice to produce would have to be given, and so on *ad infinitum*. Chairmen of quarter sessions might therefore rest assured that it was not necessary to give notice to a prisoner to produce a notice which had been served on him.

Recent Judicial Decisions

Negligence by Person in Stationary Vehicle: Offence under Highways Act, 1835

Watson v. *Lowe*

An important explanation of the decision in *Shears* v. *Matthews* (see page 87 of the April issue of this Journal last year) was given by the High Court in *Watson* v. *Lowe* (1950 *W.N.* 26) in making clear when charges under section 78 of the Highways Act, 1835, may properly be brought against persons in charge of stationary vehicles.

At a court of summary jurisdiction an information was preferred by a police superintendent charging the respondent with contravening section 78 of the Highways Act, 1835, in that he did unlawfully by negligence interrupt the free passage of a certain carriage, to wit, a pedal cycle. The cyclist was riding his bicycle at a normal speed and for a distance of fifty yards in front of him he had seen a stationary motor-car on the near side of the road. As the cyclist was passing the car its front offside door was suddenly opened by the respondent and the cyclist was knocked off his machine. The motor-car was at different times driven by both the owner and the respondent; before the accident it had been driven by the owner with the respondent as passenger. The owner had temporarily left the car, whereupon the respondent had moved into the driver's seat and attempted to start the car: the engine stopped and he opened the front offside door in order to start it by hand. He admitted that he did not look to see if there were anything approaching. Thinking that he was bound by the decision in *Shears* v. *Matthews*, the stipendiary magistrate found the offence not proved. The High Court disagreed and allowed the appeal by the prosecutor.

The Lord Chief Justice said that the magistrate had not fully understood the decision in *Shears* v. *Matthews*. In that case the driver of a car, which was stationary, was charged with negligently causing hurt and damage to a cyclist on the highway, and the court decided that, where a person was charged with that offence, the acts of which he was alleged to be guilty must be acts in connection with the driving of the car: it was not the driving which was negligent there but the opening of the door, which knocked somebody off his bicycle. That was what happened in *Watson* v. *Lowe*, too. Here, however, the defendant was not charged in respect of anything to do with driving: it was not an act of negligence in connection with driving that was material on the facts charged but the interruption of free passage by negligence. The defendant had been negligent, but not in the driving. His lordship said that if in *Shears* v. *Matthews* the defendant had been charged under the part of section 78 under which the present defendant was charged the conviction would have been upheld. The court had laid down in the earlier case what it was necessary to prove if a defendant were charged under that part of the section which was there concerned, and not if he were charged under another part of it. The magistrate in *Watson* v. *Lowe* was held to have come to a wrong decision in point of law and the appeal was allowed.

Information Required by Police of Alleged Traffic Offence: No Need to Specify Offence

Pulton v. *Leader*

The appellant in *Pulton* v. *Leader* (65 *T.L.R.* 687) was served with the following notice by the Police: " Road Traffic Act, 1930. Application for name and address of driver. The driver of a motor-vehicle bearing index mark and identification number . . . which was used at . . . Street on January 18th, 1949, is alleged to have committed an offence under the above-mentioned Act. In compliance with the requirements of section 113 (3) you are hereby requested to furnish at an early date on this form the name and address of the driver of the vehicle on the above occasion." The appellant returned the notice saying that he would be glad to know the nature of the alleged offence before giving the name and address as requested. After further correspondence the appellant (who was in fact the owner of the car in question) was charged with failing to give information under section 113 (3). He was convicted by the magistrate and appealed to the High Court.

The High Court held that section 113 (3) only requires the Police to allege that an offence under the Act has been committed by the driver of a vehicle; it does not require them to allege what offence. Once they allege that the driver has committed an offence, they are entitled to ask anybody who, they think, can give information to tell them who the driver was.

" It is absolutely necessary that the Police should have such a power, otherwise they might often be unable to enforce the provisions of the Act. For instance, the Police find a car on the road; they may not know who the driver was; it may be the owner or some other person. They find sitting in the car a person who may be the owner, or the driver, or any other person—they do not know. Therefore section 113 (3) of the Act provides that they are to be given information. In the present case no question arises, and the Court declines to consider whether the offence which the Police intended to charge was an offence or not, although that question was raised at the police court and seems to have been argued at great length. The offence in the present case was refusing to give the information which was asked for under section 113 (3)." The above opinion of Lord Goddard, C.J., met with the agreement of the other members of the Court and the conviction was accordingly upheld.

Charge too serious for Dismissal under Probation of Offenders Act

Pickett v. *Fesq*

There is no doubt that the High Court has the power of correcting a decision of justices by ordering them to inflict a penalty instead of their dismissing the charge under the Probation of Offenders Act, 1907. The court exercised this power in *Pickett* v. *Fesq* (1949 2 *All E.R.* 705) because of the gravity of the charge and in spite of the extenuating circumstances which the justices thought existed. The respondent, an elderly woman of small means, pleaded guilty to attempting to take out of the country £85 in one-pound notes in breach of the Exchange Control Act, 1947, section 22 (1). She said that she knew she was permitted only to take £5 sterling out of the country, but that " it was a matter of life and death " to her to take the money to Italy to her son who had no work and was in debt. The justices dismissed the information under the Probation of Offenders Act on the ground of the extenuating circumstances. The High Court held on appeal by the prosecutor that the respondent's deliberate offence against the Exchange Control Act, 1947, could not be regarded otherwise than as serious and any sympathy which might be felt for the respondent could not be permitted to obscure its gravity, and, therefore, the case must be remitted to the justices with an intimation that it was their duty to impose a penalty.

As was pointed out by the court, the Act of 1947 was passed to protect sterling in the serious financial situation which exists in the country at the present time, and it is of the utmost importance that its provisions should be observed by all citizens and that, if they do not observe the stringent provisions of the Act, they should be brought before the courts and that the courts should deal resolutely and properly with them. The Lord Chief Justice said: " If circumstances of sympathy are to be introduced into a matter of this sort, it would in a great number of cases be possible for the court to overlook deliberate offences against the Act. In my judgment, such a thing would not be right." The fact that it was a matter of life and death to the respondent to take the money out, as she said, simply meant that she had every reason to commit the offence if she could. It was the duty of the justices to impose a penalty. It was not for the High Court to indicate what penalty should be inflicted, but that a penalty must be inflicted and that that penalty must not be a nominal one there was no doubt.

Since August 1, 1949, section 1 (1) of the Probation of Offenders Act, 1907, has, of course, been replaced by section 7 of the Criminal Justices Act, 1948. The main difference between that section and the Act of 1907 in effect is that under that Act the court could refrain from convicting at all. The illogical situation which used to arise has often been pointed out in the High Court and Parliament has altered the law now by providing that there must be a conviction, but the defendant can be discharged without any penalty. It appears probable, though not certain, that the decision of the High Court in *Pickett* v. *Fesq* would have been the same if the offence had been committed after August 1, 1949, and the justices had made an order under section 7 of the Criminal Justice Act, 1948, discharging the defendant absolutely.

Aiding Abetting : Agent Guilty when Offence Committed by Owner

Carter v. *Mace*

The extent of criminal liability on account of aiding and abetting in certain circumstances is well illustrated by *Carter* v. *Mace* (1949 2 *All E.R.* 714). The appellant was summoned for aiding and abetting the commission of an offence against the Road and Rail Traffic Act, 1933, section 9 (1), by a lorry owner. The owner had a licence which entitled him to operate a goods vehicle, but which was subject to certain conditions in regard to the distance within which he could operate and the materials which he could carry for hire. His licence (a B or limited carrier's licence) entitled him to carry building plant and building material for a certain distance, et cetera. The appellant carried on a business which was described as a clearing house for transport; this meant that he executed orders from people who wanted goods transported and engaged lorry owners to do the work. In the present case the appellant employed a lorry owner to carry copper cathodes which he, the appellant, had undertaken to transport for someone else, but the lorry owner's licence did not entitle him to carry such goods. The lorry owner was committing an offence and it seemed to the High Court to be clear that the appellant was aiding and abetting the commission of the offence. A person who undertakes such a class of business must see that contracts are carried out in a legal manner, and that the people whom he employs can lawfully carry out the contracts which he has made.

Procedure on Making Order to Report to Appointed Society

R. v. *Keeler*; *R.* v. *Speakman*

Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and he has certain previous convictions he must normally be ordered to report to an appointed society, after discharge from prison, for a period of twelve months. The court may decide not to make such an order in a given case, having regard to the circumstances, including the character of the offender. This is the effect of section 22 (1) of the Criminal Justice Act, 1948. In *R.* v. *Keeler* no order had been made although the applicant had previous convictions making him liable to such an order. At first the justices had given no reasons for not making an order, but stated, on inquiry, that they had not made an order because the machinery of finding the prisoner's address after discharge would put an embarrassing burden on the society concerned. The Court of Criminal Appeal declared that that was a question for Parliament when they considered the Criminal Justice Bill and it was held that when justices refrained from making an order under section 22 (1) they must say why. They must state what special reasons they had for not doing so. The court said that the special reasons must be comparable to the special reasons required under section 15 (2) of the Road Traffic Act, 1930, for not making an order. Accordingly an order under section 22 was made by the court on the application for leave to appeal.

In the second case, in which a sentence of three years' corrective training had been passed, no order under section 22 (1) had been made. The court thought that in these circumstances the recorder was right in making no order. On being sentenced to corrective training a prisoner came automatically under the provisions of the third schedule to the Act of 1948, and not under section 22.

Commercial Petrol : Correct Method of Taking Samples

Spicer v. *Clark*

A police officer, having made a preliminary test which indicated to him that there was commercial or ' red ' petrol in the tank of a private motor-car, by way of taking a sample syphoned petrol from the tank by means of a rubber tube into three medicine bottles successively, without any interruption of the flow. On these facts the justices in *Spicer* v. *Clark* (65 *T.L.R.* 674) held that a single sample had not been taken and divided then and there into three parts, as prescribed by section 10 (3) of the Motor Spirit (Regulation) Act, 1948, but that three samples had been taken, and that a charge against the owner under section 2 (1) of the Act should accordingly be dismissed. On an appeal by the prosecutor the High Court took a different view.

It seemed to the Lord Chief Justice that there had been an exact compliance with the section, for the sample which the police officer took was extracted from the bulk and was contained in three bottles. There was no necessity to put the whole sample into one bottle first, and then divide it up into three bottles. The portion which he drew from the bulk he did divide into three portions. The justices took a view apparently based on a decision of other justices referred to in one of the local government newspapers, but the High Court could not agree with that. Their decision was wrong and the case was sent back to them to be re-heard, since they rejected the evidence of the analyst.

One of the judges, Mr. Justice Lynskey, desired to say that if the sample had not been taken by means of a continuous flow, he should personally have taken the view that it was three samples: " I should not like this case to be quoted as laying down that this would be a proper way in which to take samples of petrol if there were any interruption of the flow."

Special Reasons for Not Disqualifying Driver : No Attempt or Intention to Drive under the Influence of Drink

Jowett-Shooter v. *Franklin* ; *Chapman* v. *O'Hagan*

Returning to his motor-car from a dance, a driver realised that he was under the influence of drink and decided not to drive again that night but to rest and sleep in the car. He sat in the passenger's seat, keeping the ignition key in his pocket, intending ultimately to be driven home (as he, in fact, was) by one of his employees at the dance, or, alternatively, to take a taxi-cab. He had not made any attempt or effort to drive or to get into a position to drive. On these facts, the defendant in *Jowett-Shooter* v. *Franklin* (1949 2 *All E.R.* 730) was convicted by the justices under section 15 of the Road Traffic Act, 1930, of being in charge of a motor vehicle while under the influence of drink to such an extent as to be incapable of having proper control of the vehicle. The justices also imposed a driving disqualification. On an appeal to quarter sessions the recorder held that no disqualification should be imposed, for the special reasons described above. On an appeal to the High Court the recorder's decision not to disqualify was upheld.

The court, of course, referred to the principles which it had laid down in *Whittall* v. *Kirby* (1947 *K.B.* 194) and went on to say that if, however, the court of trial finds facts which are special to the particular offence and go strongly in mitigation of the offence, it is not for the High Court to say whether or not they themselves would have imposed disqualifications. If there are proper facts found which can amount to " special reasons " that court does not interfere. In the opinion of the court the recorder (who tried the case on the re-hearing) had addressed his mind to right considerations, and he had found circumstances which could fairly be said to be special to the offence and not merely to the offender. The appeal against the recorder's decision failed.

In an article entitled " Special Reasons " in the last issue of this

JOURNAL all the decisions to date were reviewed and the opinion was expressed that it might be difficult to imagine facts which would constitute special reasons in a case under section 15 of the Road Traffic Act, 1930. The above-mentioned case now provides an authoritative example, as does *Chapman* v. *O'Hagan* (65 *T.L.R.* 657). This case, which all members of the Divisional Court recognised as being very much a borderline case, illustrates the difficulties in the way of finding special reasons where the serious offences falling under section 15 are concerned.

In *Chapman* v. *O'Hagan* a veterinary surgeon pleaded guilty to being in charge of a motor-car while under the influence of drink or drugs to such an extent as to be incapable of properly controlling it. Two days before he had been kicked in the leg by a horse. On the day in question, as the wound was inflamed and painful, he had taken certain drugs in the larger doses suitable for dogs as distinct from human beings. Not knowing that alcohol would have increased effect when taken after the drugs, he consumed during the evening his normal moderate quantity of whisky and beer. At 10.10 p.m. he was seen staggering near his car. At 10.55 p.m. he was seen sitting in the car, which had since 10.10 been driven across the road and was half on the footway with no lights on. The justices exercised their discretion not to disqualify the defendant for holding a driving licence for the " special reason " that the drugs had rendered him more prone to the effects of alcohol and that he was unaware that they would have that effect. The prosecutor, a police inspector, appealed to the Divisional Court.

The Lord Chief Justice referred to the very difficult question whether justices are justified, having convicted and fined a man of being in charge of a motor-car when unfit to drive owing to drink or drugs, in finding special circumstances entitling them to refrain from disqualifying him. Speaking for himself, if the case had been before him, his lordship would have had no difficulty in holding that there were no special circumstances on the facts of this case. " On the other hand," he said, " there was evidence to which the justices applied their minds, and I feel difficulty in saying that we can reverse them unless we come to the conclusion that their finding was perverse ; and I am certainly not prepared to say that. I think that they have given their best consideration to the case, and have come to a conclusion on a matter in which they have a discretion. I disagree with the way in which they have exercised their discretion, but I do not think that that is a sufficient ground in law for upsetting their decision. Accordingly, I have come to the conclusion, after considerable hesitation and with some reluctance, that this appeal must be dismissed." Mr. Justice Lynskey, who agreed that the appeal should be dismissed, said that if there were facts which showed that the drunkenness was induced either by the malicious act of some third party, or, as on the special facts of this case, by ignorance of the effect of drink on drugs, that was a matter which the justices were entitled to consider as a special circumstance. He added, however, that if he had been trying the case, even if he had thought that there were special circumstances, he would have held that the aggravating circumstance of the defendant's taking control of the car knowing that he was under the influence of drink and drugs was sufficient to prevent the exercise of the discretion in the defendant's favour.

An important point was brought out in the judgment of the third member of the court, Mr. Justice Croom-Johnson. He had the greatest possible doubt in this case because the justices appeared to have regard to the reason why the defendant should, after taking his accustomed quantity of alcohol, have come under the influence of drink. He doubted whether the justices had appreciated the proper moment of time by reference to which they ought to be considering whether there was material entitling them to exercise the discretion not to disqualify. His conclusion was that it was a very exceptional case and he did not feel so certain of the view which he had expressed as to be unable to concur in the judgment proposed by the other members of the court.

" SPECIAL CIRCUMSTANCES " AND FINES FOR DEFENCE REGULATIONS OFFENCES

R. v. *Leitz*

Under regulation 55 (1) (*d*) of the Defence (General) Regulations, 1939, which, of course, applies to very many offences before the courts these days, a person guilty of an offence against the regulations is liable to a minimum fine unless the court, having regard to any special circumstances, thinks that there is a good reason for not imposing a fine, or for imposing a fine of less amount than the minimum fine. There was an appeal in *R.* v. *Leitz* (33 *Cr. App. R.* 132) on the ground that a fine of £150 imposed for a breach of the Consumer Rationing Order, 1947, was excessive inasmuch as the appellant had acted in perfect good faith throughout and was wholly misled by the information supplied to him by the purchaser into committing the somewhat technical offence.

So far as the Court of Criminal Appeal was aware the question had not previously fallen for determination under the Defence Regulations, but the court said that the principle that is to be applied in considering special reasons under the Road Traffic Act is a principle which is equally applicable to a consideration of the meaning of the defence Regulation. The principle in *Whittal* v. *Kirby* (1947 *K.B.* 194) was referred to and quoted by the court. On the facts of *R.* v. *Leitz* the court agreed that it might well be said that the fact that no profit had been made out of the transaction in the long run could afford no special reason, because that would be a reason which applied to the offender rather than to the offence. But, having regard to what had been said on behalf of the Crown in regard to the circumstances of the offence, the court came to the conclusion that it was a case in which it could be said that there were special circumstances for not imposing a fine. The fine was set aside and the appellant was bound over for two years instead.

JURY'S NOTE TO JUDGE: IRREGULAR PROCEDURE

R. v. *Green*

Justice must not only be done but must manifestly be seen to be done. One illustration of this principle is the rule that any communication passing between a jury and the presiding judge must be read out in court so that all parties concerned might know what question the jury were asking and what was the answer returned thereto. Unfortunately the recorder in *R.* v. *Green* (1949 *W.N.* 488) had made an error in this respect and the Court of Criminal Appeal felt bound to quash the conviction.

The appellant was indicted on a charge of receiving stolen goods. After the recorder had summed up the case to the jury and they had retired to consider their verdict, they sent to him in his private room a written communication asking for a direction on a particular point. The recorder sent the jury a written answer. Neither the question nor the answer was read out in open court. The jury brought in a verdict of guilty. The recorder informed the Court of Criminal Appeal that he was unable to remember the question which the jury had asked him, but that it was quite a simple matter on which he had already directed them in his summing up. It was argued for the appellant that there had been such an irregularity in the procedure that the conviction could not stand. It was a well-recognised rule that these matters must take place in open court, said Lord Goddard, C.J., on appeal, and there was held to be no option but to quash the conviction.

There was a second indictment against the appellant which had been ordered to remain on the file and the court declared that that indictment would be heard at the next quarter sessions. There are sometimes great practical advantages in the procedure of allowing an indictment to remain on the file.

DANGEROUS DRUGS TO BE KEPT IN LOCKED RECEPTACLE: MEANING OF "RECEPTACLE"

Dhulipala Kameswara Rao v. *Wyles*

An information had been preferred by the respondent, a chief inspector of police, charging the appellant in this case (113 *J.P.* 516) with a contravention of regulation 5 (2) of the Dangerous Drugs Regulations, 1937. That regulation, as amended by Regulations of 1948, provides that every drug in the actual custody of an authorised person shall, except when the necessities of the practice of his profession, function or employment otherwise require, be kept in a locked receptacle which can be opened only by him or some other authorised person. The appellant was a registered medical practitioner and accordingly an authorised person. He left his motor-car in a car park, the car being left locked. In the car was an unlocked leather case containing drugs to which the Regulations applied. The car was stolen, the lock was forced, and the drugs were found in the case in the car when the car was recovered. The stipendiary magistrate found the charge proved and fined the appellant £5. The High Court upheld the conviction on a case stated.

It was held that the drugs could be said to be in the appellant's actual custody, within the meaning of the regulation, even though at the particular time he had not actually got his hands on them. It was further held that the regulation contemplates that drugs are to be kept regularly in some receptacle, and not that it can be said that at any particular moment, because a lock is turned somewhere, that there is a compliance with the regulation. The judgment was put entirely on the ground that a motor-car cannot be regarded as a receptacle. If it could be, it would be just as true to say, if a doctor left his drugs lying about in a house and locked the front door the back door and the windows, that they were in a locked receptacle. No one, according to Lord Goddard, C.J., would call a motor-car a receptacle for drugs any more than he would call a house a receptacle for them: " One has to give the regulation an interpretation which will make sense of it, and, unless the words compel one to take another view, construe it in a way to effect the purpose which the legislature must have had in mind. It is impossible to say that a motor-car which must be locked and unlocked according to whether the person is in it is a " receptacle," and there is no suggestion that the appellant keeps his motor-car locked at all times whether he is in it or not."

THE EFFECT OF PREVIOUS CONVICTIONS IN NORTHERN IRELAND

R. v. *Murphy*

It is clear from the wording of the Criminal Justice Act, 1948, that a conviction in the courts of Northern Ireland cannot be reckoned as a " previous conviction " for the purposes of section 23 (1), which deals with notice of intention to prove previous convictions as a basis for a sentence of preventive detention. In *R.* v. *Murphy* (1949, 2 *All E.R.* 867) a conviction in Northern Ireland was included in the notice, and the recorder, who was upheld on this point by the Court of Criminal Appeal, held that, as a consequence, he could not deal with the accused as a proper subject for preventive detention. But the recorder was held to be in error in saying that a conviction in Scotland would have had the same effect if included in the notice. The Act allows a conviction by a court in any part of Great Britain to be included; Scotland is part of Great Britain but Northern Ireland is not. The latter is part of the United Kingdom, which includes Great Britain and Northern Ireland. A conviction in the latter cannot be proved any more than a conviction in South Africa or one of the other dominions or colonies or a foreign country can be proved. The court also indicated that a conviction before a court martial could not be proved for this purpose.

Amending Errors in the Indictment

R. v. *Jennings*

Although the accused is entitled to expect that the indictment be drawn with great care so as to make clear what offence the prosecution will in fact seek to establish, there is statutory provision for amending defects in an indictment. A defect does not necessarily entitle the accused to be acquitted. The Indictments Act, 1915, section 5 (1), provides that where, before trial or at any stage of a trial, it appears to the court that the indictment is defective the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice. This provision gives the courts wide powers to amend, but, as the reported cases show, the powers are used restrictively, in the interests of the accused. The decision of the Court of Criminal Appeal in *R.* v. *Jennings* (33 *Cr. App. R.* 143) illustrates the manner in which the statutory provisions should be operated.

Among other counts in the indictment was one charging the appellant with unlawfully using a ration document contrary to article 27 (*e*) of the Food Rationing (General Provisions) Order, 1947. The particulars of the offence in the indictment alleged that she with intent to deceive did use a ration document, to wit a ration book (the number being specified), which had been issued to her on July 12th, 1948. During the course of the trial counsel for the prosecution stated that his case really was that the appellant had on July 12th, 1948, used the reference leaflet from the ration book of an earlier year in order to get her new book. The substance of the charge was that she ought not to have obtained a new book in this way, in view of the circumstances. Counsel for the prosecution applied for an amendment of the indictment by striking out the words which specified the ration document to be a ration book issued on July 12th, 1948. Counsel for the defence objected, but the court of trial allowed the amendment. The appellant was therefore convicted on this count. On the appeal the conviction was quashed.

The Court of Criminal Appeal thought that the appellant was seriously prejudiced by having to deal with something which in its essence was a totally different offence from that charged in the indictment. There was only one course which the trial judge should have taken and that was to direct an acquittal on the particular count as there was no evidence to support it.

Criminal Law and Practice in Scotland

A Rejected Alibi

Dickson v. *H. M. Advocate*, 1949, *S.L.T.* 446

IN the case of *Lennie* v. *H.M. Advocate* (1946 *J.C.* 79) it was laid down that although a special defence of alibi was rejected, the evidence led in support of it might still play an essential part in checking, modifying or rebutting the Crown evidence and that, so used, it might have the important result of inducing a reasonable doubt of whether the Crown had proved the guilt of the accused. Since that decision agents and counsel for the defence have sought to take full advantage of this doctrine and to make of it a universal rule. The limitations of the "*Rule in Lennie*" are made clear in the case now reported.

James Dickson was indicted in the Sheriff Court of Lanarkshire at Glasgow along with others on two charges of assault, the locus being Coalhill Street, Glasgow, and the time about 10 p.m. on the date libelled. Dickson gave formal intimation of a special defence of alibi and, at the trial, tendered as witnesses his wife and her sister who both deponed that at the time charged Dickson was at home and in bed—so flatly contradicting the two complainers and three independent Crown witnesses who positively identified Dickson as one of the assailants and spoke to the part played by him in the incidents charged. Dickson was convicted and sentenced. He appealed to the High Court of Justiciary, but his Counsel's argument, founded on the case of *Lennie*, was rejected and the appeal dismissed.

"The ground of appeal" said Lord Cooper (with whom Lord Mackay and Lord Birnam concurred) "is that the Sheriff misdirected the jury, (1) by instructing them that, if they were not satisfied that the appellant's alibi had been proved, they must disregard the alibi altogether and (2) by failing to instruct them that, even if they rejected the alibi, they might still use the evidence led in support of the alibi for the purpose of checking, modifying or rebutting the Crown evidence. It is manifest that the objection finds its origin in the case of *Lennie*, with regard to which I desire to say this: *Lennie* was a case of murder in which the special feature of an elaborate alibi tendered by the accused was that for part of the time it was corroborated and for part of the time it was uncorroborated . . . The Lord Justice-General was careful to say that he did not intend to lay down exhaustive rules and that it would be imprudent to attempt to do so; and he further went on to draw a clear distinction between cases where alibis are rejected as untrustworthy and cases where alibis are rejected only as lacking sufficient corroboration. It was only regarding the second type of rejection of an alibi that his lordship said that the evidence in support of that alibi, *ex hypothesi* trustworthy though only partially corroborated, might still play an essential part . . . These observations were intended, I am certain, to be applicable to the type of case of which *Lennie* was an example and not as laying down a new principle to be utilised by all presiding judges in directing juries in every case in which a plea of special defence of alibi is tendered."

Turning to the case in hand, Lord Cooper pointed out that the issue before the jury (unlike the issue in *Lennie's* case) was simply a straight-forward choice between Crown and defence witnesses—whether to believe the one set or the other. The verdict showed that they rejected as untrustworthy the evidence of Mrs. Dickson and her sister. In these circumstances, no exception could be taken to the Sheriff's direction and the conviction must stand.

Parking on Private Property

McAvoy v. *Heatly*

James McAvoy, the appellant in this case, had been charged in the Burgh Court of Edinburgh, that from 10.45 p.m. on June 29th to 6.40 a.m. on June 30th, 1949, in Craigmillar Park Lane, Edinburgh, he did cause a motor-car to stand longer than was necessary for taking up or setting down passengers, in contravention of the Edinburgh Corporation Order 1933, Section 117 (6). The offence charged was one which could be committed only in a street: but the definition of "street" in the Order included any lane, or part thereof, open to be used by the public whether a thoroughfare or not. McAvoy denied the charge but, after a hearing of evidence, was convicted.

Briefly summarised, the facts proved were: that the lane referred to in the charge was 725 feet long; that it ran between the back gardens on the west side of one residential street and those on the east side of another; that entrance to the lane was obtained from public streets at either end: that in general the lane was 13 feet wide and surfaced with stone setts: that the lane provided access to garages and back gardens, the garages being set back in bays in the lane: that the accused was proprietor of a house and back ground adjoining the lane but not of the garage erected on the feu, to which garage access was obtained by a bay in the lane: that this bay was laid in cement concrete, was 27 feet

9 inches long, varied in width from 5 feet 3 inches to 6 feet 4 inches, and (subject to right of access in favour of the owner of the garage) belonged to the accused: that the bay was open to the public—in the sense that there was no physical barrier to prevent entry thereto by drivers or pedestrians using the lane: that the accused caused a motor-car to stand in the bay of which he was proprietor from 10.45 p.m. on June 29th to 6.40 a.m. on June 30th, 1949: and that the car, which was standing completely in the bay, did not cause any obstruction. In convicting on these facts, the Magistrate rejected a submission by a solicitor that his client could not be convicted in respect that he had left his car on his own ground and in a position in which it caused no obstruction.

McAvoy appealed, but with no success. In course of their judgments, the High Court Judges rejected the contentions of Counsel for the appellant (1) that, as the purpose of the section was to safeguard the right of free passage, there should have been no conviction in the absence of proof of obstruction—a "hopeless contention" in view of the case of *Bego* (1933 *J.C.* 23); (2) that a motorist could not be convicted of causing his car to stand on his own ground—but that in the Court's view was not the proper test; (3) that the bay, being cemented, was clearly marked off from the lane; and (4) that the lane was not "open to be used by the public" in respect that no substantial—as distinct from incidental use by the public had been proved—as to which the Court ruled that the plain words of the definition could not be qualified in the way suggested and that, in any event, the point was met by the earlier decision in *Magistrates of Edinburgh* v. *N.B. Railway Co.* (6 *F.* 620).

Criminal Justice

Police officers in Scotland would be well advised to make themselves familiar with the main provisions of the Criminal Justice (Scotland) Act, 1949, which will shortly be brought into force by Order in Council and which contains innovations of importance both in the substance of the law and in the procedure of our "solemn" and summary criminal courts. The brief selection from the leading provisions of this enactment given below may be of service.

Absolute discharge. Section 1 of the Act allows a criminal court, in dealing with an offender found guilty of a charge (other than one which carries a sentence fixed by law) to make an order discharging him unconditionally. If the court is summary, no conviction is involved. This order takes the place of the familiar "Dismissed P.O. Act."

Probation. While certain changes are made, the pattern of the Scottish probation system and procedure remains much as before. A probation order made by a summary court is to be made "without proceeding to conviction." In this matter Scotland parts company with

England, where probation now always involves the recording of a conviction. The probation bond, as we have known it, disappears: but the offender's willingness to accept "the requirements of the order" (*i.e.* what we have till now referred to as the conditions of the bond) is a condition precedent of the making of an order. Power is given to a court to stipulate, as a requirement of the order, that the probationer shall submit to treatment for his mental condition. This power, however, is restricted and carefully safeguarded.

Abolition of certain punishments. The Act abolishes "quartering" as part of the sentence for High Treason; Outlawry; penal servitude and hard labour. (Sections 14-16).

Restrictions in punishment. Sentence of death is not to be pronounced or recorded against a person under 18 years at the time when the offence was committed. Imprisonment may not be imposed on a person under 17 years, nor on any person under 21 years unless the court is satisfied (after enquiry) that no other method of dealing with him is appropriate. Power is given to the Secretary of State to raise progressively (as alternative methods become available) the minimum age for a prison sentence (Sections 17-19)

Corrective training and preventive detention. Two new forms of punishment are introduced: (1) Corrective training (two to four years) obviously intended for the young recidivist, and (2) a new type of preventive detention (five to fourteen years) for the "old lag" (Section 21)

Discharged prisoners. In certain cases (see section 22 and 6th Schedule) discharged prisoners are to be required to register and report at a police station. The provisions of the Schedule should be carefully studied.

Remand. Section 28 of the Act provides that on remand without bail (1) an offender under 14 years must go to a remand home; (2) an offender between 14 and 17 years must go to a remand home unless he is unruly or depraved; (3) an offender between 17 and 21 years (or an offender between 14 and 17 years certified unruly or depraved) must go to a remand centre if such is available; and (4) all others must go to prison.

"Art and Part." To remove doubts section 31 declares that a person may be convicted of, and punished for, a contravention of a statute or order notwithstanding that he was guilty of such contravention as art and part only.

Reporting of Offences. A new power, of special significance to the police, is given to the Lord Advocate, *viz.* to issue instructions to a Chief Constable or to Chief Constables "with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area or areas of such Chief Constable or Chief Constables." A Chief Constable to whom any such instruction is issued must secure compliance therewith (Section 33).

Productions. Where, in proceedings on indictment, a person who has examined a production is adduced to give evidence with regard thereto, and the production has been lodged at least eight days before the trial, it is no longer to be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator-fiscal or the police and returned by him, after his examination of it, to the procurator-fiscal or the police, unless the accused gives notice as provided in section 35.

Previous convictions. Perhaps the most far-reaching change introduced by the Act is that relating to the libelling of previous convictions. These are no longer to appear in the complaint or indictment but are to be set out in a separate notice served on the accused in the manner set out in sections 39 and 46. The terms of these sections should be carefully noted—particularly the requirement of section 46 (4) that an accused in custody, in summary proceedings, must be served with the complaint and with notice of previous convictions "before he is asked to plead." (Note that if the offence is statutory he must also be served with a further notice setting out the penalties to which he is liable.)

Persons unlawfully at large. Wide powers of arrest without warrant are granted to constables in relation to persons who, having been sentenced to imprisonment, corrective training, preventive detention or borstal training or ordered to be detained in a detention centre or committed to prison or remand centre, are unlawfully at large (Section 66).

An Irish Conviction

Mawhinney v. *Adair*

John Mawhinney was convicted, in the Sherriff Court of Lanarkshire at Glasgow, on an indictment which libelled two charges of uttering forged 50 dollar bills. Of the two previous convictions libelled against him, one had been obtained in the Central Criminal Court, Dublin, in 1940. The Sheriff imposed a sentence of 18 months' imprisonment. On appeal the sentence was halved on the ground that the Irish conviction should not have been libelled. The relevant statutory provision (sections 63 to 65 of the Criminal Procedure (Scotland) Act 1887) makes it clear that only previous convictions obtained "in any part of the United Kingdom" may be libelled in aggravation of an offence charged in a Scottish Criminal Court. It followed (as the Lord Justice-General pointed out in delivering judgment) that since 1923 a conviction obtained in the Irish Free State, Eire or the Republic of Ireland must be ignored. The statement to the contrary on page 12 of the latest edition of Macdonald's *Criminal Law* was erroneous.

The Blackburn Child-Murder

AN ACCOUNT OF THE FINGER-PRINT WORK UNDERTAKEN IN THE INVESTIGATION OF THE CRIME

By Detective Chief Inspector COLIN CAMPBELL
Lancashire Constabulary

JUST after 4 a.m. on May 15th, 1948, the Chief Constable of Lancashire received a telephone call from the Chief Constable of Blackburn, saying that a child had been found murdered in the grounds of Queen's Park Hospital, and asking for the immediate services of a finger-print expert to examine the scene for finger-prints. As officer-in-charge of the Lancashire Constabulary Finger-Print Bureau, I was instructed to go at once to the hospital. I arrived there at 5.10 a.m., and met Mr. C. G. Looms, Chief Constable of Blackburn, who gave me details of the case as far as they were known at the time.

Having got an outline of the case, I toured the outside of the building and made a careful search for signs of forcible entry, but with six unlocked doors, three on each side of the ward, the open windows in the small room at the north end and an unlocked door at the south end of the ward, it was soon seen that it would be a simple matter to gain admittance without using force. However, there was still the need for a thorough examination to be made at all likely points of entry. Not finding any signs of forcible entry, the search for finger-prints on the exterior was then commenced. The walls were of ordinary brick, but as the paint-work on the window edges and doors was clean and smooth, I examined all painted surfaces, windows, doors and the brass door handles.* Everything which would bear finger-prints was examined, with the result that several finger and palmar impressions were found. Each impression, or sequence of impressions, was labelled and actual size photographs were made of them.†

Entering the ward by the south door and bearing in mind the foot-prints seen beside the cot, care was taken not to destroy others. Standing in the doorway one could just see what appeared to be bare foot-prints in the wax-polished floor. These prints were only fragmentary, the pressure of the feet having made micro-shallow indentations in the thin layer of polish, but by getting down so that one's eyes were within a few inches of the floor, they could be

* Hydrerg-cum-creta was applied with a squirrel hair brush.
† A Graflex finger-print camera with orthochromatic and panchromatic cut films was used.

seen by specular reflection. Several kinds of powder were applied to the floor for the purpose of making the foot-prints more easily seen, but as none of them had any effect the prints were circled with white chalk so that they could be located from a standing position. After having examined the whole floor surface, it was found that the prints appeared to start at the door leading from the small room at the north end of the ward and travel to an instrument trolley which was against the north wall. From there they crossed to the west side and to the second cot from the door.

At this cot it was seen that the foot-prints were implanted side by side on the floor, as if made by a person standing alongside it. Similar foot-prints were found alongside the third and fourth cots, the latter being the cot from which the child was taken.

The toes of these prints were at right angles to the cot and actually under its edge, and it was quite obvious that they had been made by a person standing very close to the cot. From there the footprints went down the ward and stopped about two feet from the south door. At this point they appeared to have turned round and traversed the whole length of the ward in a straight line, right up to the north door. There were no foot-prints on the east side of the ward.

I selected eight of the most complete and distinct right and left foot-prints, and after having labelled them, with the assistance of Detective Inspector Sherlock of the Lancashire Constabulary, I photographed them by specular reflection.*

As already explained, the foot-prints could not be seen except by specular reflection, and knowing that to photograph them the camera would have to be tilted at an unusual angle to the floor, it was appreciated that a considerable amount of distortion would show on the negative. A 15-inch ruler was placed alongside each print so that it was included in the negative, and when the negative was later placed in the enlarger it was possible, by using the ruler as a standard, to make the necessary adjustments and reproduce the foot-prints in actual size and true perspective.

Having made photographs which would show the shape and size of the foot-prints, it was decided, if possible, to make photographs showing papillary ridge detail. (The ridge data on the epidermis of the feet is just as valuable a means of identification as the data on the hands.) Once more I got down on the ward floor, this time to make a closer examination for a print which showed ridges. Most of the prints had been smeared in the polish, but after a lengthy search I was surprised to find that the prints had been made not by bare feet but by stockinged feet, and after further search a print was found which

* Orthochromatic and process plates were used in a half-plate camera. Lighting was by one 500-watt lamp.

showed the texture of the woven fabric quite clearly. This mark was labelled and photographed by specular reflection for actual size reproduction.

The work on the floor being completed and a photographic record made of the clues, it was now possible to walk about the ward with freedom and begin the search for finger-prints. On the floor beside the cot from which June was taken was the bottle referred to (page 28). This bore a label inscribed "Sterile Water." Naturally, it was the bottle that was first examined and on it were developed more than twenty finger and palmar impressions (Fig. 1). It was noticed that some of the impressions had been made quite recently and that others were fairly old. The fresh impressions were seen to be much larger than the old ones.

After the latent impressions on the bottle had been developed, it was put in a place of safety and the examination of the whole interior of the ward was started. This examination encompassed doors, windows, walls, trolleys, cupboards, instruments, and cots; in fact, anything that could bear latent finger-prints. Needless to say, again numerous finger and palmar impressions were found. Their exact position was noted and those which appeared on fixtures were labelled and photographed. Where they appeared on portable articles, the articles were put on one side so that they could later be taken to the finger-print bureau at Preston.

After 15 hours the search and examination had been completed, and the next step was to assess, as far as possible, the value of the clues which had been found. In this connection I interviewed all the hospital staff who had been called to the search for the child and all who normally worked in the ward. From questions put to them I satisfied myself of three things, *viz.*:

(*a*) That no member of the hospital staff had been in the ward in their stockinged feet.

(*b*) That the bottle was normally kept on the trolley at the north end of the ward and that it was not on the floor beside June's cot at 12.15 a.m.

(*c*) That none of the staff had carried the bottle from the trolley and placed it on the floor.

With regard to the foot-prints, it had been noticed that the ruler placed alongside showed that their overall length was 10¼ inches. No nurse was found with feet of that size, and as the only man called to the ward before the arrival of the police was a night porter of about five feet four inches in height, and with correspondingly small feet, I was satisfied that the foot-prints were those of the person who had taken the child from the cot.

In order that I might eliminate, as soon as possible, all impressions

which had been legitimately made on the bottle, I took the finger- and palm-prints of all the nurses who normally worked in that ward, and further, I sought out and took the finger- and palm-prints of the doctors, the matron, the assistant matron, and others whose duties sometimes took them to the ward, some 15 people in all. The freshly made finger-prints on the bottle had impressed themselves on my memory, and as the finger-prints of the staff were taken it was noted with satisfaction that the fresh impressions had not been made by any of them.

By 8.50 p.m. this job was done, and I discussed my day's work with Detective Chief Inspector Capstick and Detective Inspector E. W. Daws, of New Scotland Yard, who had arrived to take control of the enquiry. I expressed the opinion that the foot-prints on the floor and the fresh finger-prints on the bottle had been made by the murderer.

At this stage it should be related that at about four o'clock that afternoon, Detective Chief Inspector Robert McCartney and eleven detective officers of the Lancashire Constabulary Criminal Investigation Department, all of whom were experienced in large-scale murder investigations, had arrived in the town to supplement the Blackburn Borough Police Detective Staff. The Lancashire Constabulary detachment immediately commenced the job of finger-printing hospital patients and staff.

Later, Chief Inspector McCartney took charge of all enquiries at the hospital. The work of this officer and his staff was somewhat negative—though essential in character. Their job was to establish, if they could, by taking finger-prints and making enquiries regarding patients, ex-patients, visitors and employees, that there were finger-prints on the bottle which could not be accounted for by persons who had had lawful access to the children's ward. They set themselves the job of going "two years back" in their search for people who had had legitimate access.

After the discussion with Detective Chief Inspector Capstick, I left the hospital to return to the bureau with 18 exposed photographic negatives of finger-prints and palm-prints, ten exposed photographic negatives of the foot-prints, the bottle, the cot from which June had been taken, three door-handles and other articles.

By two o'clock the following morning it was found that, with the exception of ten finger and palmar impressions on the bottle, all the other finger-prints found outside and inside the ward were eliminated as having been made by persons with legitimate access to the premises.

It may be of interest to note that the only impressions on the bottle which were not identified were the freshly made marks to which reference has already been made. The impressions which were eliminated as having been made by the staff were, in fact, identical with the finger-prints of six different members of the staff.

Later that morning, the staff at the bureau photographed the impressions on the bottle and we commenced the search in the single finger-print collection—a collection containing 125,000 finger-prints of persons who had been convicted in Lancashire for 'breaking' offences during the past 12 years.

By 6 p.m. that day the search had been completed, without an identification having been made.

Meanwhile, Detective Chief Inspector McCartney and his men had 'frozen' the hospital. Nobody was allowed in, nobody was allowed out, and by the afternoon of the 16th the task of finger-printing all the patients and staff was well under way. The speed and efficiency with which they worked can be judged by the fact that by May 19th they traced and finger-printed over 400 people who had had legitimate access to the ward. Before they finished at the hospital they had traced and finger-printed 642 people, all of whom, within the preceding two years, had had legitimate access to the actual ward. Their thoroughness and perseverance is exemplified by the fact that, by June 15th, enquiries at the hospital resulted in members of the female staff, male staff, ex-members of the staff, male patients, female patients, visitors, ambulance drivers, boy friends and fiancées of members of the staff, in fact, 2,017 persons in all who had had general access to the hospital, being finger-printed for comparison with the impressions on the bottle. All these finger-prints were compared with the murder prints, but none was identical.

At 9 a.m. on May 17th my staff was organised so that all the murder prints could be compared with every finger-print filed in the bureau. No identification was made, but when it was finished we were satisfied that identical prints were not filed in our collections.

On May 19th a local man was detained at Blackburn Central Police Office for questioning regarding the murder. I was called to Blackburn to compare his finger- and palm-prints with those on the bottle. They were not identical and he was therefore eliminated from the enquiry.

The same day, photographic copies of the murder prints were sent to the principal finger-print bureaux in the British Isles with the request that search be made in their finger-print collections with a view to establishing the identity of the offender.

It was now becoming increasingly clear that a very large number of people would have to be finger-printed in the course of this investigation, and in the first few days police officers engaged on the work of taking finger-prints had gone to considerable pains in obtaining complete sets of finger and palmar impressions of all those people whom they interviewed. With the object of saving time and trouble in taking finger-prints for comparison and being satisfied that the

remaining impressions on the bottle were those of the murderer, I decided, if possible, to devise a quick and simple, yet fool-proof, method of taking the finger-prints for comparison.

It was seen that the impressions on the bottle consisted of a left thumb-print (Fig. 2), left fore (Fig. 3), middle and ring finger-prints (Fig. 4) and a left palm-print (Fig. 5). There were also impressions which appeared to have been made by right middle and ring fingers (Fig. 6). The remaining three were fragmentary finger and palmar impressions about the neck of the bottle which could not be allocated to any particular finger or hand.

Of all these impressions, only three had been made by a simultaneous grip. These were the left fore, middle and ring finger-prints. A left thumb-print appeared on another part of the bottle, and although, from the size and texture of the ridge formation of this thumb-print, it was reasonable to assume that it was the impression of a digit of the same hand which had made the three simultaneous impressions, I was forced—in devising a simplified scheme—to provide for the possibility of the thumb-print belonging to some other hand. I decided, therefore, that we must be provided with a left fore-finger impression and a left thumb impression of each person interviewed. The left fore-finger impression was chosen as the clearest of the simultaneous impressions, and, with these ideas in mind, a card 3¼ inches square was designed on which could be recorded the name, address and National Registration Identity Number of the person interviewed, and on which could be impressed, on one side, the left fore-finger and left thumb, and on the other side the four fingers of the left hand simultaneously. The latter were to be a check upon the fact that the *left* hand of the person interviewed had in fact been used in obtaining finger-prints.

As the murder prints were, in effect, plain impressions, it was decided that no rolled impressions need be taken, and that being so, experiment proved that an ordinary black inking pad, such as is used for rubber stamps, would do for inking the fingers. A light pressure of the digits on the pad and a light pressure on the card was all that was required. It was found that (with a properly inked pad) strong, clear impressions bearing all the detail necessary for comparison could easily be obtained by this means.

A supply of cards and inking pads was obtained, and on May 20th, 1948, less than a week after the crime had been discovered, plans were laid in Blackburn and at the Finger-Print Bureau for the speedier taking and comparison of finger-prints, and for a squad of police officers under the control of Inspector William Barton, of the Blackburn Borough Police, to commence a house-to-house enquiry, which was to ensure that every male person over 16 years of age who was in Blackburn on the night of the murder was traced and finger-printed.

The finger-print cards collected daily were to be sent to the bureau every afternoon. There the comparison would be made and the finger-prints returned to Blackburn the following day, where they were filed alphabetically.

The work done by Inspector Barton and his men cannot be praised too highly. He had the task of ensuring that no man in the town slipped through the finger-print net. His task was one which required initiative, organising ability and tact, and later it was proved that he was possessed of these attributes in a high degree.

Meanwhile, the detectives engaged in the investigation were turning up, as possible suspects, the names of scores of persons each day; all were persons who had been in the town on the night of the crime; some were still in the town; others had spread far afield. With each day that passed, the investigation was gathering momentum, and even before the mass finger-printing started the staff at the bureau were making hundreds of special comparisons daily.

The enquiry stretched wider and wider and before long the bureau was receiving from Canada, the United States of America, Germany Italy, Norway, Sweden, Burma, South Africa and Australia, and from many other places all over the world, the finger-prints of men who had been in Blackburn on the night of the crime.

On May 23rd the work of tracing and finger-printing all men over 16 years of age in the 35,000 houses in Blackburn was commenced. From then on, day after day, finger-print cards were received for comparison with the prints found on the bottle. As one lot of prints came in, another lot was sent back, so that eventually the finger-prints of the Blackburn males were coming in and being dealt with at the rate of about 500 per day.

Finger-prints came to the bureau not only from Blackburn but from all over the country. They were all compared. The result was "negative."

By this time the results of the search of the murder prints at the principal bureaux in Britain were now being received, but as these proved to be "negative," it was then decided to send copies of the prints to every police force in Great Britain. A circular letter was prepared and at the bottom were illustrations, enlarged two diameters, of the left fore-finger-print and left thumb-print already referred to.

The left fore-finger was called 'A' and the left thumb 'B,' and to assist other bureaux in their search, the letter said: "The impression 'A,' which is one of a sequence, was made by a left fore-finger; the left middle-finger of the same hand is an ulnar loop with at least 15 ridge counts, and the left ring-finger is an ulnar loop with at least 11 ridge counts. The tip only of the left little-finger appears. The impression 'B' was made by a left thumb, and it is probable, though not certain, that it was made by the same hand that made the impression 'A'." The circular was sent to every police force in Great Britain, with the request that search and comparison be made in any finger-print collections maintained by them.

From our examination of the murder prints, we had formed certain opinions about the murderer and, in answer to numerous questions from the investigating officers, were prepared to answer some of them with certainty. Other questions we would not answer for fear of conveying wrong or misleading impressions. We would not make a guess at the murderer's age, we would not guess as to whether he was left-handed or not (a common question this latter), nor would we guess the answer to many other questions put to us.

Nevertheless, early in the investigation I had said that the finger-prints were those of a man strange to manual labour. We were prepared to say that the prints were those of a man, because the sequence of the left fore, middle and ring fingers was so spread out on the bottle that only a big man could make the same span with his fingers. We did say that the murderer was not an old man, because of the clearness of the ridge detail—there were no cracks, breaks, or other skin conditions such as appear in the hands of an elderly man. We said that he was not a manual worker, because of the perfect condition of the ridges—they did not have the characteristic callouses, coarseness and temporary injuries such as appear on the hands of a worker.

The belief that he was a local man was general amongst the investigating officers. This belief was held from the outset and was based on the murderer's apparent knowledge of the peculiar layout of the hospital and the method of exit used by him. Only a local man would have the knowledge to make his exit from the hospital as the murderer had done. This belief was the reason why everyone was so keen to have the whole male population finger-printed.

Having regard to the views which had been formed from the examination of the murder prints, it was thought that if the prints had been made by a young man, then there was a very strong possibility that he had been in the armed forces during the war period. If that was so, there was also a strong possibility that he had served abroad. Royal Naval personnel served in practically every part of the world; Army personnel served in Europe, Africa, Asia and the Pacific; and Royal Air Force personnel served in all parts of the world and received training in Canada, South Africa and the United States of America.

Further, there was no doubt that this crime had been committed by a man of the strongest sex impulses. Was it not possible therefore, that if he had been a young man he may have served abroad, and that whilst abroad he may have given way to these impulses and committed a sexual crime? Was it not possible that he had been arrested and finger-printed for that crime?

On the other hand, was it not possible that the murderer, if an ex-service man, would try to flee the country? Might he not flee to some land in which he had served, some land which he had learned to know and like?

All this seemed possible, so, after consultations with the officers in charge of the investigation, a circular letter was prepared for transmission to all the principal finger-print bureaux throughout the world.

This letter was dispatched by air mail on June 25th, ten days after the circular letter to the British police forces. It was similar in make-up, but the last paragraph read: " As it is possible that this crime may have been committed by a person who was a member of the Allied Forces during the last war and who, as such, may have served in your area, or by a person who may enter your area, I have to ask if you will be so good as to cause search to be made in your finger-print collection with a view to establishing the identity of the offender."

Meanwhile, day after day, the Blackburn mass finger-print check went on. The finger-print search was now reaching world-wide scale. It was often thought that if the science of finger-prints had any flaws or was fallible, then surely they would come to light. The finger-prints of millions of people were in the process of being compared with the murder prints.

Back at home, finger-prints were coming from Blackburn, they were coming from mental institutions, from camps housing foreign subjects who had in the post-war years sought refuge in Britain, from other police forces, from abroad, but still the prints on the bottle remained unidentified.

Towards the end of July, the mass finger-printing at Blackburn was nearing completion, and on the 30th of that month the Chief Constable of Blackburn decided to extend the check still further. He sent a circular letter to every police force in England, Scotland and Wales, naming certain categories of persons who might be regarded as " suspect " and from whom finger-prints were desired for comparison.

The response to this was terrific; finger-prints arrived at the Lancashire Bureau with every post; but even then the comparisons bore no fruit.

From July 18th, and for the next three weeks, there was a drop in the number of finger-prints being received from Blackburn. At that time, Inspector Barton and his officers were making their

check at the Food Office. However, we were comparing nearly as many prints as ever because of the latest circular letter. Hundreds of finger-prints were still being sent in from other police forces.

On August 9th, the Food Office check having been made, batches of finger-prints again started to come from Blackburn, only to be compared and sent back.

About three p.m. on August 12th, a batch of cards arrived. One of the finger-print experts making the comparisons spotted the long-sought-for finger-prints. The left thumb-print and the left fore-finger-print were there at last, on the same card; just as they appeared on the bottle. Quietly the expert made the comparison. He could not believe his eyes. He checked and re-checked. At length he exclaimed, " I've got him! It's here! "

The card bore the name and address, " Peter Griffiths, 31, Birley Street, Blackburn," and the National Registration Number, " NBA 6917-188," which indicated that the owner was an ex-service man.

Information of the identification was sent to the Chief Constable of Blackburn and at 9.15 p.m. on August 13th Griffiths was arrested in Moss Street, Blackburn, a few yards from his home.

On August 14th I received Griffiths' inked finger-prints, palm-prints and the prints of his stockinged feet. I then found that the ten impressions on the bottle were identical with his left thumb-print; left fore, middle and ring finger-prints; right middle and ring finger-prints and with his left palm-print.

His foot-prints were identical in shape and size with the prints found on the ward floor, and in addition to this there was about them six distinct and peculiar characteristics which, in my opinion, put their ownership beyond doubt. (Figs. 7 and 8).

In proving the identity of the finger, palmar and foot-prints, I prepared and produced before the Court, photographic enlargements of four fingers and one palmar impression from the bottle and four finger-prints and the left palm-print of Griffiths. On each of these I marked 16 ridge characteristics which were in agreement. Needless to say, there were no characteristics which disagreed. I also produced actual size photographs of foot-prints from the floor and of the prints from the prisoner's stockinged feet. They had so obviously been made by the same person that I did not consider it necessary to mark points of similarity, and it may be of interest to note that the trial judge, Mr. Justice Oliver, seemed particularly impressed by the foot-prints.

Antecedents for the Courts

By H. S. KEMBLE
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THE final phase of every case is the history of the accused, given to the court after it has decided to convict and before it pronounces sentence. In preparing antecedents there are many pitfalls, things to avoid and, too, details that should not be omitted. How should we set about it?

Many experienced C.I.D. men begin as soon as the offender has been charged, or, if process is by summons, at the conclusion of the interview. It is a very opportune time because the man, or woman as the case may be, has just admitted or denied the allegation. He or she will already have been told that a prosecution is to, or may, follow; surely then that is the occasion to get together the early basis of antecedents.

A well-established method may, I suggest, be followed with advantage so that omissions are less likely. In addition to particulars of the exact name, age, address, and occupation, there is a wealth of other material that should be considered: early childhood; parents, the home and its surroundings; schoo l; the adolescent stage; employment and companions; intelligence standard and physical incapacities; tendencies which indicate reasons for specific criminal acts; towns and places visited since the last appearance at court, or during the preceding two or three years, as the case may be, and a full detailed description of the individual, incorporating marks, deformities and peculiarities and other noteworthy characteristics.

At a cursory glance one might question if so much analytical detail is either necessary or desirable. I must emphasise that if a juvenile is under review, in most districts the probation officer, or one of his staff, will make and present the report to the court, except in respect of offences dealt with on indictment; consequently we can conveniently direct our attention to adults. Let us examine each phase to discover its value.

Early Childhood: If the accused is an elderly person then little purpose can be served in delving into the depths of early life, except if the charge be murder one has to bear in mind the probability of a defence of mental instability of one kind or another being put forward, or a verdict of manslaughter being returned; should that be anticipated the closest scrutiny and inquiry must be made with the view of negativing the defence set up, if insanity or other early abnormal tendencies

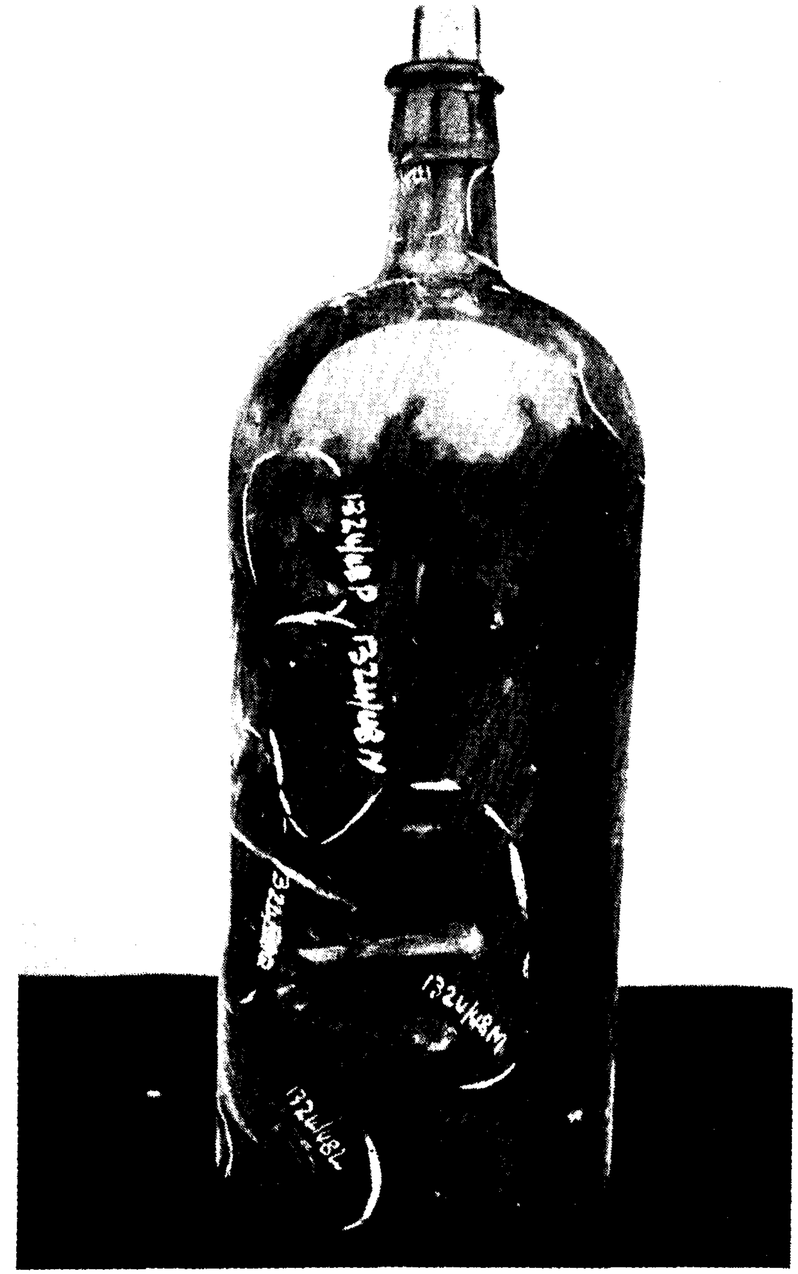
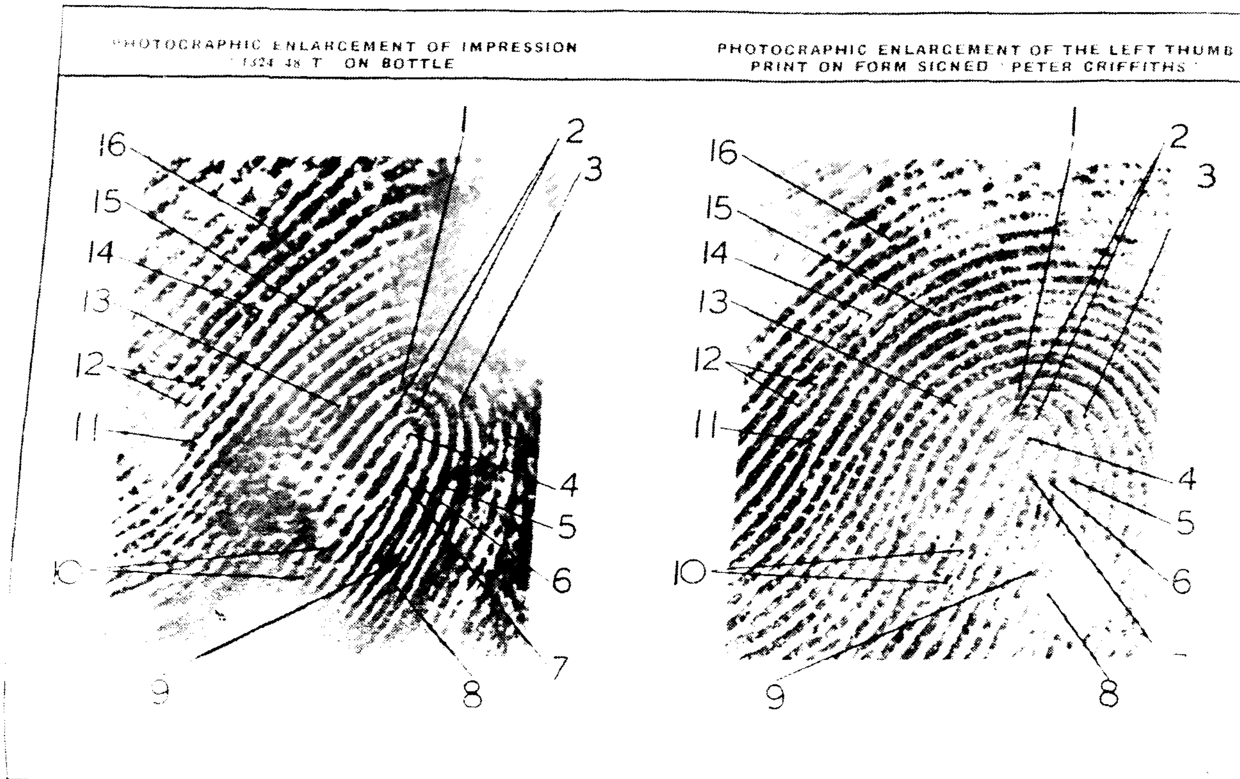


Fig. 1 (*face* p. 112)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'1324 48 T' ON BOTTLE
PHOTOGRAPHIC ENLARGEMENT OF THE LEFT THUMB
PRINT ON FORM SIGNED 'PETER GRIFFITHS'
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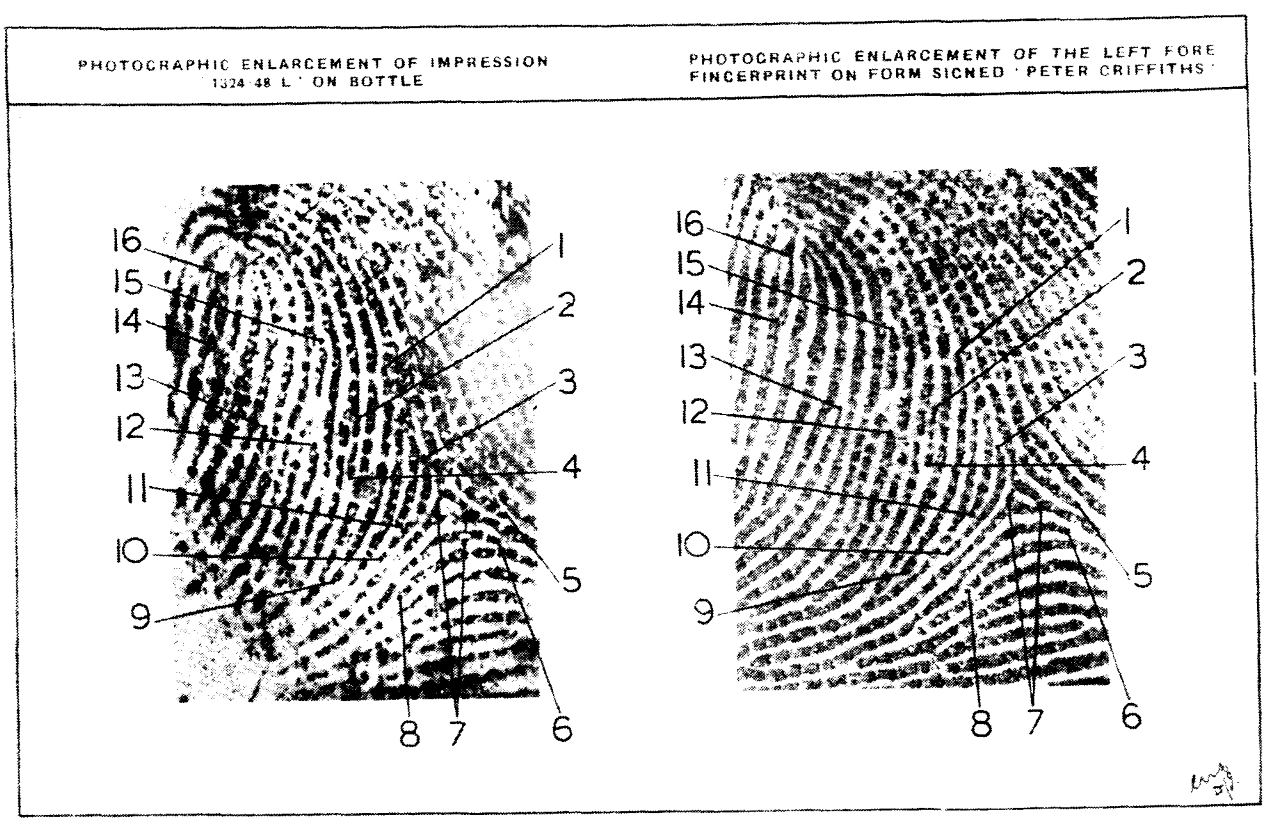
Fig. 2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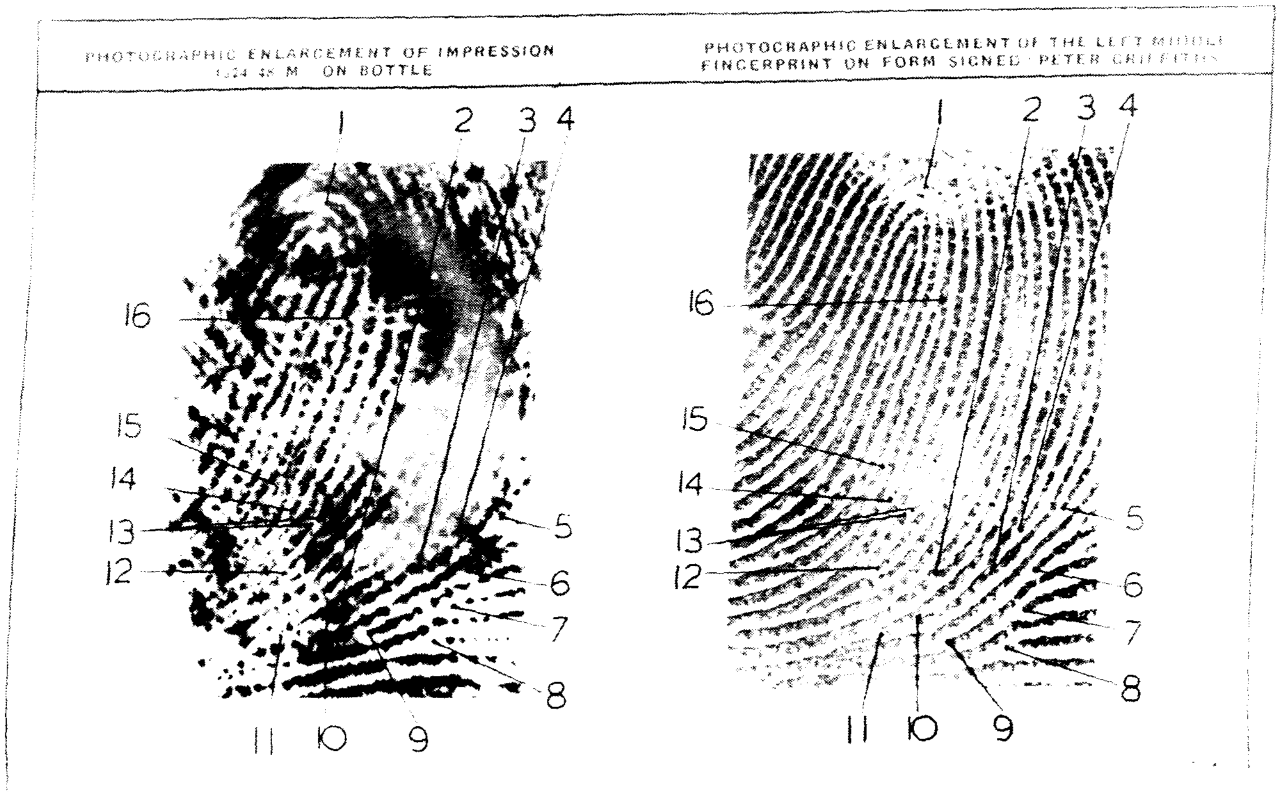
PHOTOGRAPHIC ENLARGEMENT OF IMPRESSION
1324 48 M ON BOTTLE
PHOTOGRAPHIC ENLARGEMENT OF THE LEFT MIDDLE
FINGERPRINT ON FORM SIGNED 'PETER GRIFFITHS'

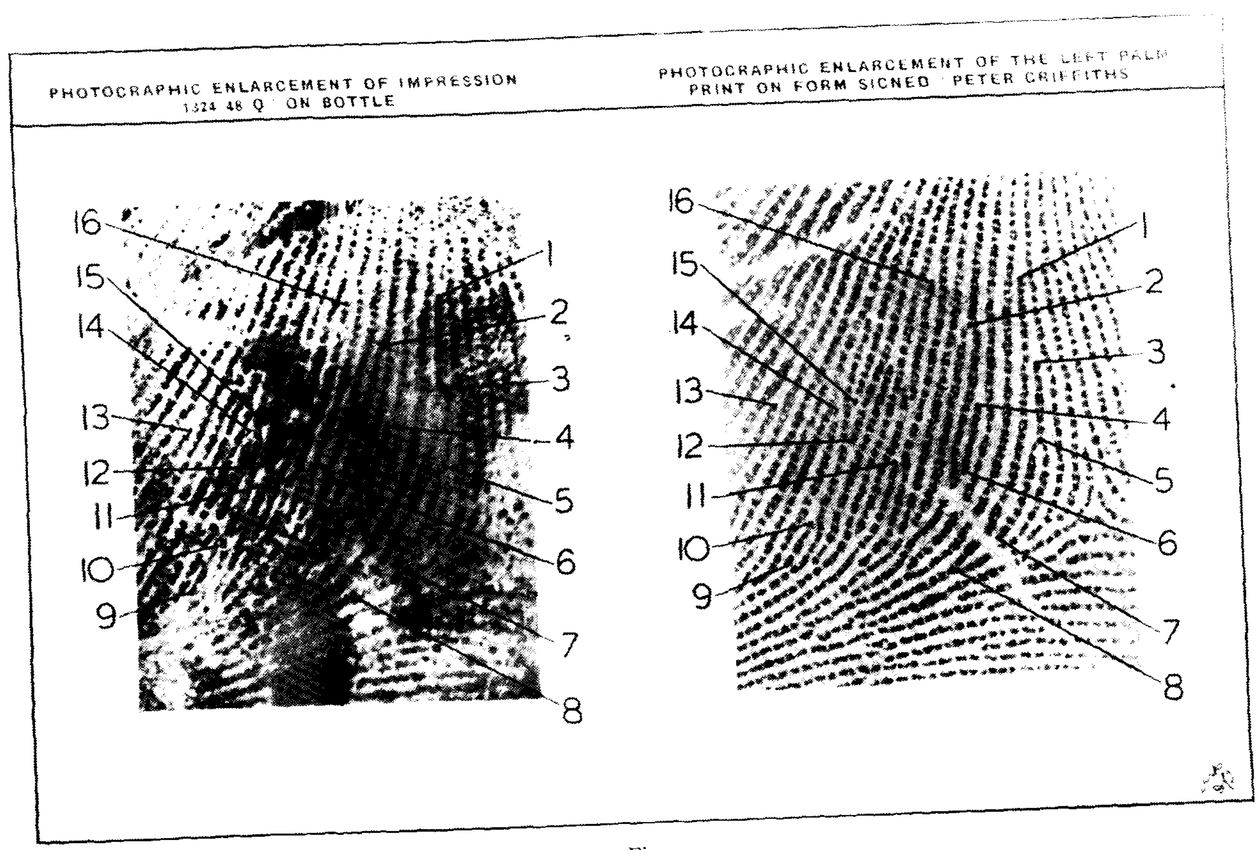
PHOTOGRAPHIC ENLARGEMENT OF IMPRESSION
1324 48 Q ON BOTTLE
PHOTOGRAPHIC ENLARGEMENT OF THE LEFT PALM
PRINT ON FORM SIGNED 'PETER GRIFFITHS'

Fig. 5

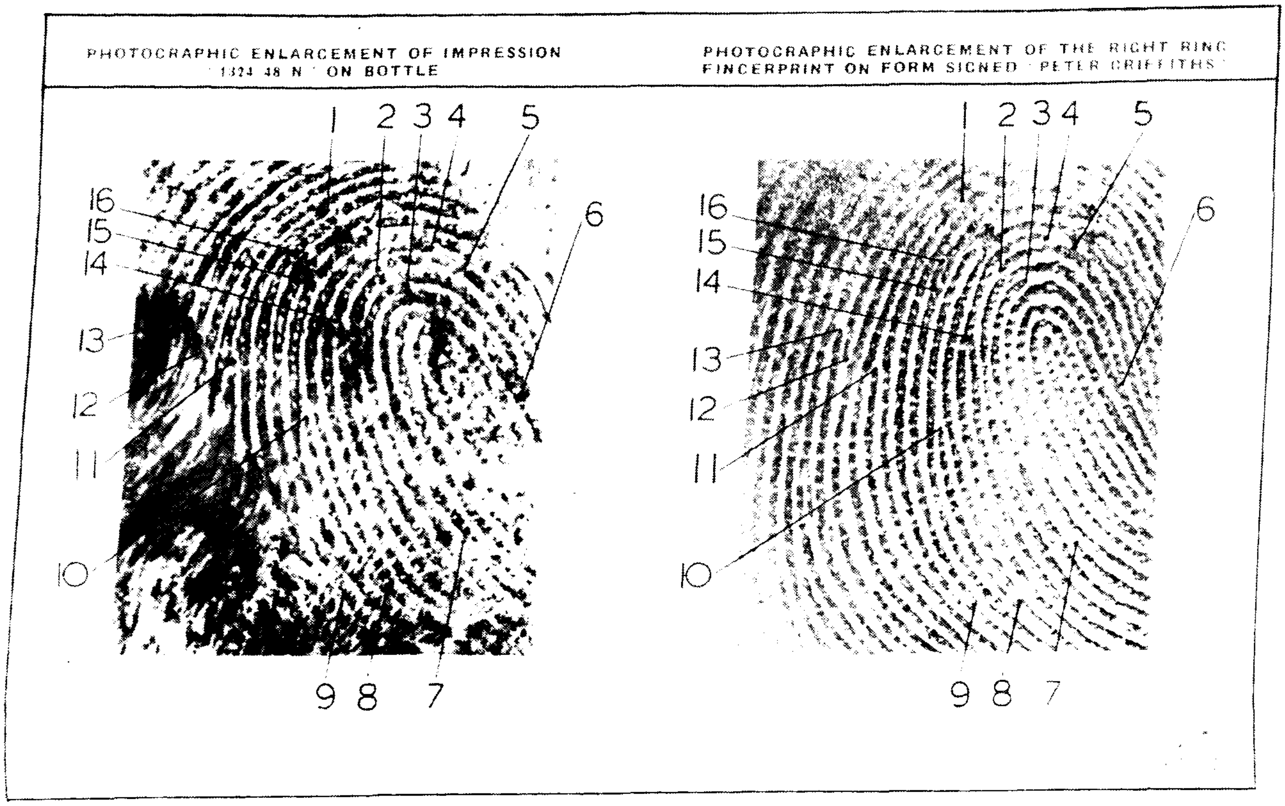

Fig. 6

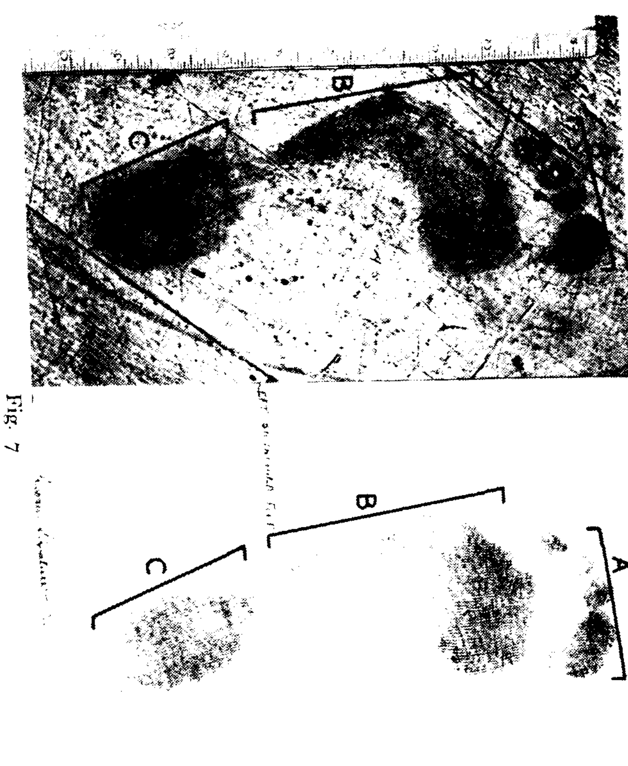

Fig. 7

Fig. 8

are regarded as fictitious. In special cases there will be other aspects of the childhood to think about. It is positively a matter for the projection of thought, at the time, as to the turns and twists which might develop weeks or months ahead at the trial. If it appears reasonable to suppose any such, then it will be wise to get the facts; in any event, if when the history is being finally got together there is manifestly no need for the information it can be discarded.

Parents, the home and its surroundings: Young men and women may have been much influenced by early environment. If the parents were of bad character and the home and the district squalid and undesirable, the offender, who is in no way responsible for that, may nevertheless have encountered a serious handicap to honest living, and the court should know it. Conversely, if the accused has persistently followed a criminal course, despite excellent parentage and the best of home surroundings, that, too, is a matter to ponder over. If these facts are not put in the report the officer should, when appropriate, know about them to answer questions, if asked by the defence.

School: Normally with adults particulars of school careers are unnecessary; but there are occasions when inquiries in court may be directed to this feature and the officer should have it in mind.

The adolescent stage: Human beings when betwixt child- and man- or womanhood often sow their wild oats, as we term it. The ordinary volatile spirits of the juvenile are not unlawful and will be disregarded; but abnormal characteristics exhibited at that period should be noted and inquired about.

Employment and companions: These often go hand-in-hand; employers and workmates frequently know more about an individual than the parents and relations; companions may, too, be confederates in crime. Inquiries directed towards them can achieve two objectives, namely, to give testimony about the subject's character, and to provide evidence of other offences or the proceeds of the crime. I well remember a gang of young men engaged in a big number of breaking offences who were discovered through one of their number, an apparently respectable fellow, having a mass of clothes in his bedroom; it was observed there by his landlady who, when called upon by the Police regarding the character of some of the others, divulged the facts and finally inculpated him as the principal; the clothes were stolen garments.

Intelligence standards and physical incapacities: A man may not be anything like subnormal mentally, and yet, by a continuous course of conduct, clearly show he is not as other men are.

Incapacities such as deafness, blindness, lameness, and other deformities: I once met an offender who time and again obtained goods by fraud; there was little doubt that because of a cleft palate, which made his speech imperfect, he would never have become a criminal. He didn't like mixing with other people and, being generally unemployed because of it, resorted to fraud.

Yet another, who had a shortened leg, developed an inferiority complex and, following a criminal urge to adjust the balance of which nature had deprived him he became an expert in false pretences. I feel that except for his incapacity he would have been an honest citizen. It is right that such features should be mentioned to the court; man is an imperfect animal at best, and at worst his frailties, severe limitations and mental attitude to them should be recognised.

Tendencies which indicate reasons for specific criminal acts: A man who was a carpenter and in the course of his work was often engaged in the renovation of houses, was of unusually scholarly disposition and an avid reader. This pre-disposition to literature made him curious to examine books in the homes he visited. The result was he stole the volumes that he coveted.

A journeyman tradesman became quite a connoisseur of china with a valuable collection of his own; he added to this by thefts from houses where his work took him. It was important in both cases to identify and give prominence to those tendencies, so that the court could deal with each case in the light of all the facts, not merely part of them.

Towns and places visited: This will indicate periods of work with various employers, consistent or casual occupations, and the possibility of linking the man with offences committed elsewhere. A false pretence man once detailed his movements in this way and it gave the first intimation that he was the author of an extensive series of depredations throughout the country.

Yet another charged with breaking into a cinema office, when interviewed about his antecedents claimed to be responsible for a wide-spread chain of country mansion breakings then current. After being cautioned, because he was in custody, he gave a plausible account of the locations and thefts, and the proffered particulars were written down into a very lengthy statement. Forces concerned were communicated with and widespread inquiries made. At last it was determined that his confession was a complete fabrication. The importance of the point is that this man, whenever he was caught, gave similar fictitious accounts. The reason for his behaviour was, I suppose, a matter for a psychiatrist; but a court can only decide upon mental examination, or treatment, if it knows the facts.

A detailed description of the accused including marks and peculiarities: As a point of police practice of the utmost importance I must emphasise the urgency of making a full list of *all* the outstanding characteristics, physical and others; it is as balm to investigators hereafter who have to search for the same person yet once again. I know that such information is sought when fingerprints are taken, but frequently the number

of offenders to be dealt with is big and only limited time is available. When, however, you are talking with the prisoner, to get the antecedents, an unmatched opportunity is presented to do this job without hindrance of any sort. Do it thoroughly so that nothing is overlooked.

I remember an occasion when the forces of the country were searching for a notorious fraudsman who had for about five years moved up and down our island obtaining money at will, but no one seemed able to catch up with him. An old detective said to me, " I arrested this fellow about ten years ago and the first thing I noticed about him was that the upper of his left shoe was cut, as if to relieve pressure over the toes; I recorded it at the time but it was doubtless overlooked." A characteristic of that sort is obviously outstanding and illustrates the point. Criminal record office staffs in these days don't neglect items of that kind.

Having collected together all the relevant material and included it in the finished report on antecedents (in some forces the report takes the shape of a special " antecedents " form) we arrive at the time when it is to be given in a court of assize or quarter sessions. In the summary courts, normally, the history is supplied by the senior officer who has presented the case; but in the higher courts it is generally the detective who goes into the witness-box. How best can he do it ?

In offering advice on the giving of evidence one is always conscious of one's own limitations, but as advice I should suggest you should speak slowly, but not too much so, clearly and plainly; interminably long sentences, long words and immaterial matter should be avoided. Just a simple, informative statement of fact that can be supported if challenged by the defence. Don't say anything that is merely a matter of opinion; avoid making purely damaging statements, as for example: " This man is a dangerous criminal and habitually consorts with notoriously bad characters," unless it is true and you can prove it, and it is relative to the case. If such comment is proper, by all means use it. But be just, fair, concise and plain.

I often question if in instruction about giving evidence we policemen would be better equipped by undergoing a special course of elocution; so much of our time is spent making public utterance. Lawyers, politicians and clergymen now take instruction in the art of public speaking, and the advantages are usually evident; why shouldn't the Police do it ? Possibly in the dim and distant future it may be so; one can never tell.

Since 1935 it has been the practice to supply a copy of the written summary of antecedents to the official shorthand writer, in addition to the judge and the prosecuting counsel. The Home Office letter on the subject (No. 685,290, November 11th, 1935) points out: " It should be made clear to the shorthand writer that the copy supplied is merely to assist him to follow and record what is actually said to the court about the prisoner, and that any part of the written summary which is not given in open court should not be included in the transcript." The letter indicated the form of the brief note for attaching to the shorthand writer's copy emphasising this point.

You will, I feel certain, be quite confident when giving antecedents in the witness-box if you have made a careful and deep survey of all the material that should be considered. If you are in doubt about a particular aspect, and you don't know if you should refer to it or not, my advice to you is, *don't*! Counsel for either side can ask you if they wish, and the judge will certainly do so if it is important. Above all be just, fair, concise and plain in your statement.

'Kite Flying'

By Sergeant J. Mitchell
Metropolitan Police

DURING the recent hearing of an appeal against conviction for false pretences, the Lord Chief Justice of England described the case as one of 'kite flying.' He said that, to use more forensic terms, it related to 'accommodation cheques,' but that he had no hesitation in using the former expression as it was so well understood by him and his brother Judges.

Although 'kite flying' is a term well known to lawyers, bankers, merchants, and, last but not least, fraudsmen, it may not be so well known to many police officers.

Lord Goddard remarked, in the course of the hearing of the appeal, that it was one of the oldest methods of defrauding banks, so it would seem to be desirable that, when encountered, its possible criminal significance should be appreciated.

The word 'possible' is important, because 'kite flying' is only fraudulent when it is used in a particular way. It is the application of a banking device called 'accommodation' which is closely associated with the procedure known as 'drawing against uncleared effects.' Because of the risk of loss and of fraud inherent in them, banks discourage these practices, particularly the former.

To understand how 'kite flying' is effected and how it is used fraudulently, it is necessary to be clear as to the meaning of the two terms 'drawing against uncleared effects' and 'accommodation.' They are part of the everyday jargon of bankers, and to realise their implications it is necessary to have an elementary knowledge of the operation of banking accounts and the handling of cheques.

The person to whom a cheque is made payable is known as the

'payee' of this cheque, and the man who signs it is known as the 'drawer.' When the payee pays the cheque into his bank, his account is credited with its value. The cheque then passes through the Clearing House to the drawer's bank, where, if all is in order, its value is debited in the drawer's account and the cheque is then said to be 'cleared.'

The time which elapses between the date it is paid into the payee's account and the date it is cleared is usually about three days. While the cheque remains uncleared the payee's bank does not usually allow cash to be drawn against it. The reason is that if cash is drawn against the cheque and it is not subsequently cleared, the bank may not be able to recover the money so paid.

If the cheque is cleared it goes to the drawer, but if it is not, it is returned to the payee's bank endorsed with the reason why it has not been met. It may be marked 'No account,' 'Refer to Drawer,' 'Signature differs,' 'Please represent,' or 'Orders not to pay,' among others.

In view of all these possible mishaps, therefore, a bank usually prefers to wait until cheques are cleared before allowing cash to be drawn against them. However, if the status of the customer is such that the bank is satisfied that there is no danger of loss, it may permit him to draw against a cheque as soon as it is paid into his account and before it is cleared. This is called 'drawing against uncleared effects.' Obviously it can only be done with the knowledge and consent of the bank.

Now as to 'accommodation.' A man whose bank allows him to draw against uncleared effects may, for some temporary period, have little or nothing to his credit in his account. He may be expecting cash to accrue to him within a few days, but at the same time he may be under the urgent necessity of making a payment which is due. If he has no arrangement for an overdraft, or is reluctant or unable to obtain this facility from his bank, he may decide to seek the assistance of a friend. This person must have an account, preferably at a bank other than that of the man seeking assistance, and it need not be in credit to any extent or at all. The friend is induced to give a cheque for the amount required in favour of the other man, who pays it into his own account and immediately draws the cheque he needs against his friend's cheque whilst it is still uncleared. Then, in a day or two, when the money which he expected is to hand, he pays it into the account of the man who obliged him and enables the latter's cheque to be honoured. He has thus made use of the three days between payment in and clearance of his friend's cheque to save his face with his creditor.

The assistance rendered by the man who supplied the cheque is called 'accommodation' and the cheque is known as an 'accommodation cheque.' It is really a means of getting an unsecured overdraft or credit for a few days without the bank being aware of the fact.

It is obvious that accommodation cannot stand by itself, but can only be effective when used in conjunction with the facility of drawing against uncleared effects. In other words, drawing against uncleared effects need have nothing whatever to do with accommodation, but accommodation necessitates drawing against uncleared effects. Accommodation, unlike drawing against uncleared effects, does not require the knowledge or consent of either of the banks concerned. It must always be used without the knowledge of the bank into which the accommodation cheque is paid because of the risk of loss to this bank which it entails. The loss may, of course, occur if no money is available to meet the accommodation cheque when it is presented.

In such a case the bank would have a claim against both its customer and the drawer of the accommodation cheque, but if each is a 'man of straw,' *i.e.* without any means at all, this right would be of no avail to the bank.

The bank on which the accommodation cheque is drawn is not affected because it cannot be involved in any loss in respect of the cheque.

In the ordinary way accommodation is very difficult to detect. This being so, persons who find themselves financially embarrassed temporarily often resort to it. By its use many a business man has successfully turned an awkward corner in his affairs without anyone being aware of the crisis or the way in which it was overcome and with no loss to anyone.

Although, as already stated, 'kite flying' does not necessarily imply fraud, its possibilities as a basis for defrauding banks are readily apparent. A person who has a banking account, a bank manager who will allow drawing against uncleared effects, and an associate or dupe with a banking account, is fully equipped to engage in this practice. If he intends to provide the cash for all the accommodation cheques, no harm will result; but if he does not, he is fraudulent.

Having decided on the latter course, the fraudsman proceeds to perpetrate a confidence trick on his bank manager. Like all confidence men, he is prepared to exercise patience and to bestow time and care on his scheme. He will even devote some of his own cash to getting it under way.

At first he operates his account in a straightforward manner and by so doing gains the goodwill of the bank manager. Eventually he is granted the privilege of occasionally drawing against uncleared effects in a small way. He ensures that every cheque is met without question and this increases the manager's confidence.

He then pays in some of his associate's cheques for small amounts. They are drawn on some other bank where the associate has an account with perhaps little or no credit balance. Before they are presented for

clearance, the fraudsman puts the associate's account in funds with his own money to ensure that the cheques are met. He thus uses some of his own cash to prime the pump as it were.

The associate may also be concerned in the fraud, but he is much more likely to be a dupe who has been persuaded by some pretext to permit the fraudsman to manipulate his account. He agrees to sign any cheques on his account on request, or better still, to provide a supply of signed blank cheques on the account. He will be assured that he cannot possibly suffer any loss as provision will be made for all such cheques to be met, and he may be given the further inducement of some monetary consideration. The pretext for the arrangement may be that the fraudsman wishes to conceal his interest in some business, or that it is to lessen the impact of income tax or purchase tax.

The bank becomes used to seeing the associate's cheques and, as they have always been met, they are accepted as genuine.

All is now set for the next stage of the scheme. The fraudsman informs the bank manager that he has begun to deal wholesale in some commodity and that he has established connections for quick turnover on a cash basis. He explains that the cheques of his associate are those of his selling agent in payment for goods. He goes on to say that in future he may need sums of money quickly to take advantage of opportunities to buy quantities of goods as and when they are available. He points out that this may sometimes involve drawing against uncleared cheques, or even being overdrawn on his account for a day or two, and trusts that the manager will see his way clear to extend these facilities to him.

The manager believes the story, which is, of course, false. He does as requested and is pleased to find that all cheques are always met and that any overdraft is always wiped out in a day or two. The scheme is now in full swing, so the fraudsman is able to arrange this. This is what is happening :

On Monday he pays into his account a cheque made payable to himself for, say, £100, drawn on the account of the dupe where there is *no* money to meet it. The same day he draws out £100 in cash against this cheque before it is cleared.

On Tuesday, Wednesday and Thursday he does likewise, and thus he is in possession of £400 of the bank's money. On the latter day, however, Monday's cheque is due to reach the dupe's bank for payment. The fraudsman must, therefore, pay £100 of the £400 into this bank to meet the cheque. He does so and has £300 left. At least, he would have this sum, but he has probably expended a good deal of it in various ways for his own use and benefit. On Friday morning he may have little or no money left. Tuesday's cheque is due at the dupe's bank and must be met, so he must get £100 for this purpose.

He will also need a few pounds for his own use, so he pays into his account an accommodation cheque on the dupe's bank for say, £120, and draws this amount in cash against it at once.

In its turn, this £120 will be met with money drawn against an accommodation cheque of still higher face value.

So it goes on week after week and month after month with the accommodation cheques and withdrawals ever increasing. If more dupes, with empty bank accounts, are secured, batches of their cheques are paid in.

The bank manager notes the increased value of the cheques and the fact that the drawers of cheques are more numerous, and concludes that his customer's business is prospering.

The scheme is now an ever-growing snowball moving in an endless circle. The fraudsman has improved on a classic principle by robbing Peter to pay Paul to pay back Peter further to rob him. The bank is steadily losing the money which the fraudsman is using for his own purposes, and the eventual total loss to the bank will be determined only by the time the scheme is allowed to run, coupled with the rapidity with which the fraudsman deems it safe to step up the figures on the accommodation cheques.

In theory the scheme could go on *ad infinitum*, as it is difficult for the bank to uncover it. Yet although it is difficult to detect 'kite flying' it is not impossible, and it is easier for the dupe's bank to become aware of it than for the bank on which it is being perpetrated.

The dupe's account will show that over a period the amounts in the credit and debit columns are almost, if not actually, identical and that the name of the payee of all, or nearly all, cheques paid out is the same as the name of the drawer of all, or nearly all, the cheques paid in. The scheme is unlikely to be disclosed from this source unless the fraudsman's bank queries a cheque. The chance of such a query being made is remote, as all cheques are being met, albeit with the fraudsman's bank's own money, a fact of which it is, as yet, blissfully unaware.

As far as the fraudsman's account is concerned, the signs of fraudulent 'kite flying' are daily credits and debits of identical or very similar values, both such amounts steadily increasing day by day, and lack of a permanent credit balance showing profit made in proportion to the sums handled in the account.

If the fraud does not come to light in any other way, then obviously the day must dawn when even the most complacent bank manager will awake to the fact that such phenomenal business deals each day are not possible. He questions the customer, gets the truth, or more and bigger lies which put him on enquiry, and he soon puts a stop to the operation of the banking account.

This can have one result only. Three or more days' cheques,

against which the bank have paid money, are in course of collection. The fraudsman had intended to meet them out of further and larger sums of money drawn from the bank against bigger, but not better, uncleared accommodation cheques. This source having been stopped abruptly by the bank manager, these outstanding cheques can only be met if the fraudsman, or the drawers of the cheques, pay in their own money to meet them. The fraudsman will not, and the drawers cannot, do this. The former because that is the one thing he never intended to do and the latter because they have not the means to do so. Thus these cheques are never met and the bank loses the cash drawn against them. As already noted, the extent of this loss will depend largely on the nerve which the fraudsman has displayed in stepping up the figures.

The bank can, of course, proceed against the drawers of the cheques for their value. These persons are liable for the amounts shown on the cheques which they signed, as liability goes with their signature. Their protests that the fraudsman assured them that he would always provide funds to meet the cheques, although true, will be of no avail. The bank being what is called a 'holder in due course,' that is the bank gave value for the cheques, these persons could not have escaped liability even if they had become aware that the crash was imminent and had given orders to their banks to stop payment of the cheques which they had signed. For them the inevitable result is bankruptcy.

The bank will also have a claim, for what it is worth, against the fraudsman. What is probably more practical is that he has rendered himself liable to criminal proceedings for obtaining money by false pretences. This is where the Police come into the picture for the first time, there being, of course, no means whatsoever of Police becoming aware of the facts unless they are reported by the bank, which will only be when the money is gone and probably also the fraudsman.

The offence is, of course, that he obtained money from the bank by falsely representing to the bank that the accommodation cheques were valid orders for the payment of money when, to his knowledge, they were merely worthless pieces of paper.

Because of the difficulty in believing that experienced bankers could possibly be taken in by such a scheme, it may be thought that this article bears about as much relation to real life as it does to the sport named in the title. However, those who may be inclined to dismiss it as a bedtime story are reminded that truth may be stranger than fiction.

In 1946, in London, at a branch in charge of a manager with over thirty years' experience, one of the Big Five banks was defrauded of more than £70,000 by this means. In this case the fraudsman, in less than six months, passed through his account worthless accommodation cheques to the face value of over £1,800,000, and in the same period similar cheques to a total face value of £1,065,000 passed through the accounts of three of the principal dupes.

On the last three days of the scheme he paid into the bank accommodation cheques to the total face value of £34,000, £42,000 and £50,000, and against these cheques, before they were cleared, he drew cash and bankers' drafts to the value of £46,000, £53,000 and £44,000.

In respect of the transactions on these three days he was convicted of obtaining from the bank by false pretences a total of £72,800 and sentenced to four years' penal servitude, at the Central Criminal Court. He and five of his dupes were also made bankrupt in connection with these matters.

It was in the course of the appeal against this conviction that the Lord Chief Justice, in the Court of Criminal Appeal, made the observations on ' kite flying ' quoted at the beginning of this article.

The interest in the *modus operandi* which was displayed by police officers and others when this case was being handled by the writer prompted this account of the fraud. It is hoped that it may prove of interest and practical use to some of those whose efforts are directed towards thwarting the schemes of persons who fraudulently adapt the usages of our commercial system to their own unworthy ends.

Riding or Driving to the Danger of the Public

By Sergeant Gilbert Garforth
East Sussex Constabulary, Hove

As one who has experienced no little difficulty in dealing with cases of driving or riding furiously, recklessly, carelessly or dangerously, it has occurred to the writer that a short discussion upon this very important subject and an essayed interpretation of its purpose and effect might be of some help to fellow readers, even if such efforts only succeed in being provocative.

" Knowledge is Power " in all walks of life and especially in the Police Service. To know one's job thoroughly, and to know exactly what to do when called to or in dealing with offences of this nature immediately instils confidence in oneself and radiates efficiency.

Without a thorough knowledge of the various statutes dealing with dangerous or furious driving, a police officer will assuredly find difficulties sooner or later. Ignorance of the law results in embarrassment and hesitation.

It is important to know where to find the statutory and case law required. Therefore, the purpose of this article is to analyse certain sections of various Acts of Parliament.

Every case must be dealt with on its merits, therefore we must analyse the circumstances of the incident. There are certain points which we must bear in mind and be prepared to meet, such as:

1. To prove the case beyond all reasonable doubt.
2. Look for possible lines of defence.
3. Consider the ingredients in the crime and search for flaws in the evidence.

We commence with asking ourselves numerous questions. What relevant facts have we got ?—What have we to prove to substantiate the charge ?—What Statute, if any, covers the incident ? It is now that we begin to scratch our heads and diligently examine our text-books, searching for the definition of this and the meaning of that.

During our search we find several Statutes which deal with the driving of carriages and the riding of animals on the highway, and they prescribe punishment for certain acts which cause, or may cause, injury to person or property. There are, however, peculiarities attached to each. In some Police Forces it is the practice to take action against an offender under the Statute which provides the greatest penalty, but there are other points which have to be considered in addition to the penalty. We can enumerate these as follows:

1. Where does the Statute say the offence must be committed ?
2. What powers of arrest without warrant, if any, are given by the Statute ?
3. Who can commit the offence ?
4. What type of carriage, vehicle or animal is referred to in the Statute ?
5. What must the offender do to constitute the offence ?
6. What is the penalty under the Statute ?

Let us consider the various Statutes, taking these questions *seriatim* and in order of date.

STAGE CARRIAGE ACT, 1832—SECTION 48

This Section reads as follows:

" If the Driver or conductor or guard of any stage carriage or any other person having the care thereof, or employed in upon or about such carriage, shall through intoxication or negligence or by wanton or furious driving or by or through any other misconduct endanger the safety of any passenger or other person or shall injure or endanger the property of the owner or proprietor of such stage carriage or of any other person, every such person so offending shall forfeit the sum of five pounds."

1. There is no *place* mentioned in the Section where the offence can be committed, therefore it is presumed that if the vehicle is a stage carriage within the meaning of this Act and is being driven anywhere under circumstances mentioned in the Section, an offence has been committed.

2. As this is a summary offence there is no power of arrest without warrant unless the Statute creates that power, and the Stage Carriage Act, 1832, does not give that power.

3. Several persons are capable of committing this offence and they are named in the Section; they include the driver or conductor or guard or any person having the care of, or employed in, upon or about, such stage carriage. By reference to Section 117 we find that the driver means the driver or director of the stage carriage, and the proprietor includes any person who shall be concerned in the keeping, using or employing thereof. Therefore, if action is taken against a person under this Act for an offence under Section 48 we have to prove that he is one of the persons named above.

4. What type of conveyance is a 'Stage Carriage'? The definition in Section 5 of the Stage Carriage Act was repealed by the Revenue Act, 1869, Section 39. It means 'Any vehicle, other than a railway carriage, used for the conveyance of passengers who are charged separate and distinct fares, or at the rate of separate and distinct fares for the respective seats.'

The law-makers have ruled that a horse-drawn tramcar (*Brian* v. *Aylward*, 18 *T.L.R.* 371) and an electric tramcar (*Plesse* v. *Fisher*, (1915) 1 *K.B.* 572; 79 *J.P.* 174) are stage carriages under this Act; but it has also been ruled that a privately hired omnibus used for a journey from one place to another is not such a carriage. (*McKee* v. *Weir* (1929), *S.C.* (*J.*) 14). In a recent case (*Chapman* v. *Kirke*, 112 *J.P.* 399) an electric tramcar which was being driven not in a wanton and furious manner but without care and skill amounting to negligence, collided with a lorry and was damaged, the driver was convicted and fined by the magistrates under this Section. An appeal was lodged and the point of law which was argued before the High Court turned on the definition of a Stage Carriage.

Lord Goddard stated:

> 'In my opinion, there is no doubt that a vehicle which proceeds from stage to stage at regular or more or less regular intervals and carries passengers who pay separate fares, is a stage coach or a stage carriage, whichever expression you like to use.'

The three appeal Judges were unanimous in confirming the conviction and the appeal was dismissed with costs.

5. The offender's conduct can be one of several Acts:

(*a*) Endanger the safety of any passenger or other person, or
(*b*) Injure or endanger the property of the owner or proprietor of such stage carriage or of any other person.

The conduct can be brought about by intoxication, or negligence, or by wanton or furious driving, or by or through any other misconduct of the person, and that as a result of such conduct the safety of some person was endangered, or that the property of some person was endangered or injured.

6. The maximum penalty which can be imposed for an offence under this Section is £5. Where the driver, conductor or guard is not known or cannot be found, Section 49 of the Act provides that the proprietor is liable for penalties.

A brief summary of this Section can be made as follows:

Penalty	— £5.	
Place	— No place mentioned.	
Arrest	— No power without warrant.	
Person	— Driver, conductor, guard, person having care, person employed in or upon stage carriage.	
Conveyance	— Stage Carriage.	
Offence	— *Conduct:*	Intoxication, negligence, wanton or furious driving, by or through any other misconduct.
	Act:	Endanger the safety of any passenger or other person, or Injure or endanger the property of the owner or proprietor, or of any person.

HIGHWAYS ACT, 1835—SECTION 78

Let us consider the Highways Act, 1835, Section 78, which deals amongst other things with damage by negligence and driving furiously. Under the heading of dangerous driving we can divide this Section into two separate and distinct offences.

The Section states that:

> (*a*) "If the driver of any carriage whatsoever on any part of a highway shall by negligence or wilful misbehaviour cause any hurt or damage to any person, horse, cattle or goods conveyed in any carriage passing or being upon such highway, or
>
> (*b*) "If any person riding any horse or beast or driving any sort of carriage shall ride or drive the same furiously so as to endanger life or limb of any passenger he shall be guilty of an offence."

1. This Act states that the offence must be committed on a HIGHWAY, but what is a 'highway'? Is it the private road which gives

access to the 'Manor House' or to the 'Farm Cottages'? Here again we have to search our text-books. We find after long and patient study that a 'highway' is a strip of land over which every member of the public may *lawfully* pass. According to Stephen's Commentaries highways are common to the public and a 'highway' in the full sense is a public road over which *all* subjects of the realm have a right to pass and repass. Every road constructed by the Road Board under the 'Development and Road Improvement Funds Act, 1909' is a public highway; and by the Local Government Act, 1929, Section 134, a 'road' means a highway repairable by the inhabitants at large, and except where it otherwise states in the Act it includes any bridge so repairable carrying the road.

2. Power is given by Section 78 to *any person* to arrest without warrant any driver who he *shall see* offending against the Highways Act, 1835.

3. An offender under this Section must be either the driver or the rider, and he must be either driving or riding one of the conveyances named in the Section. Until a recent decision altered the interpretation of this Section, drivers have been convicted and sentenced for negligently opening the door of their stationary motor vehicle, thereby striking and hurting another person who was either walking or cycling on the highway. In an appeal case on a similar matter (*Shears* v. *Matthews* (1949) *J.P.* Vol. 113, p. 36) it was said by the appeal Judges that the Section was aimed at negligent driving and not at a mere casual act of negligence by a driver which has no connection with driving, and that even if negligence was proved against the respondent, the act which he had committed would not bring the case within the Section, and the Justices were right in dismissing the information on that ground.

4. The next point to consider is the conveyances mentioned in the Act. It states in (*a*) 'Carriage,' and in (*b*) 'Horse,' 'Beast' and 'Carriage.' What is a 'carriage'? Our text-books tell us that they include the vehicles used in 1835, such as carriages, waggons, carts and other animal-drawn vehicles, sledges, trucks and barrows. We are also told (in Maxwell on *The Interpretation of Statutes*, p. 71) that

> "Except in some cases where the principle of excessively strict construction has been applied, the language of a Statute is generally extended to new things which were not known and could not have been contemplated by the Legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it."

During our research we find that by the Local Government Act, 1888, Section 85, bicycles, tricycles and other similar machines are carriages' within the meaning of the Highways Acts. The Road Traffic Act, 1930, Section 31, enacts that any motor vehicle or trailer shall be deemed to be a 'carriage' within the meaning of any Act and of any rule, regulation or by-law made under any Act, and if used as a carriage of any particular class shall, for the purpose of any enactment relating to carriages of that class, be deemed to be a carriage of that class. Thus, generally speaking, all road vehicles are carriages.

If the offender is not driving a 'carriage' he can still commit the offence if he is the rider of a 'horse' or 'beast.' There is no statutory definition of a 'beast,' but the dictionary tells us that it is an irrational animal.

5. To constitute an offence in both parts (*a*) and (*b*), the carriage or animal must be either driven or ridden.

In the first part (*a*), the prosecution has then to prove that there was some degree of negligence or wilful misbehaviour, and as a result hurt or damage was caused to either a person, horse, cattle or goods conveyed in any carriage which at the time of the incident was passing or being upon the highway. This clause does not appear to apply where damage is done to a carriage only; it only seems to apply if the goods conveyed in the carriage are damaged.

In the second part (*b*), no damage or hurt need be proved, but it is necessary to prove that the horse, beast or carriage was being driven or ridden furiously in a manner so as to endanger life or limb of any passenger.

It has been held (in *Chatterton* v. *Parker*, 78 *J.P.* 339) that an offence had been committed under this Section where a defendant, who was in charge of a horse and trap of which he was the sole occupant, was asleep, and the horse careered at a furious pace through a village so that a police constable who was on the road might have been endangered as to his life or limb.

6. The penalty on conviction, in addition to any civil action, for each offence is not to exceed £5 in the case of the driver who is not the owner of the waggon, cart or carriage, and not to exceed £10 if he be the owner.

An epitome of this Section can be formed as follows:

Penalty	— £5—owner driver £10.
Place	— Highway—land over which all persons have a right to pass and repass.
Arrest	— Any person witnessing has power to arrest without warrant the driver.
Person	— Driver or rider.
Conveyance	— Carriage, Horse or Beast.

Offence	—	(*a*) Driving—by negligence or wilful misbehaviour cause hurt or damage to Person, Horse, Cattle or Goods conveyed in any carriage.
		(*b*) Riding or Driving—furiously so as to endanger life or limb.

TOWN POLICE CLAUSES ACT, 1847—SECTION 28

This Section applies only in towns and urban districts and to those rural districts where it has been extended by special order under Section 276 of the Public Health Act, 1875. An offence is committed where:

> "Every person who in any street to the obstruction, annoyance or danger of residents or passengers, rides or drives furiously any horse or carriage or drives furiously any cattle."

1. The place where the offence can be committed under this Section is described as in 'any street'; this term includes any road, square, court, alley and thoroughfare or public passage, and means a place to which the public have a *right* of access, such place being a path which has been claimed as a 'Right of Way.'

This Section does not appear to be confined to highways, etc., which are repairable by the Parish; it also includes the carriageway and footways at the sides of such roads, squares, etc.

Several decisions have been made as to whether the spaces in front of shops or the land which is used by the public adjoining the street, such as railway approaches and yards, are part of the definition of 'any street'; the facts in each case are different and the legal principle which seems to be inferred is that found in *Curtis* v. *Embery* (1872) *L.R.* 7 *Ex.* 369, which states that a 'street' does not include a spot from which the public may be shut out by the *owner* of the soil. The definition of a 'street' has been extended, for the purpose of this and a few other offences, to a district where an application has been made to the Home Secretary, and he has made an order for that district to adopt Section 81 of the Public Health Acts Amendment Act, 1907. By this Section the place where this offence can be committed is extended to:

> "Any place of public resort or recreation ground belonging to or under the control of the Local Authority, and any unfenced ground adjoining or abutting upon any street in an Urban District."

If action is taken against a driver or a rider for furiously driving or riding a horse, cattle, or carriage under Section 28 of the Town Police Clauses Act, 1847, in a place which has been extended by Section 81 of the Public Health Acts Amendment Act, 1907, evidence should be available in court to prove the existence of the Order made by the Home Secretary.

It would appear that the place of public resort, as well as the recreation ground, must belong to or be under the control of the Local Authority.

2. Any Constable or other Officer appointed by virtue of this or the Special Act shall take into custody without warrant any person who within his view commits this offence.

3. The offender must be either the driver or the rider, and

4. The conveyance is either a 'carriage' which has the same meaning as a 'carriage' under the Highways Act, 1835; or a horse or cattle—cattle meaning a beast of pasture.

5. As in every offence under Section 28 of this Act, the prosecution must prove either annoyance, obstruction or danger to residents or passengers. It is not necessary to call as a witness the person who has been annoyed, etc., or to prove that any particular passenger was endangered. It must, however, be proved that the offender was driving or riding furiously. It is not necessary to prove, as in the Highways Act, 1835, that the person was driving or riding furiously so as to endanger the life or limb of any passenger, but it is necessary to prove that the furious driving was done to the danger or obstruction or annoyance of residents or passengers.

It is very helpful to note that a failure on the part of any person to observe any provisions of the 'Highway Code,' which has been prepared by the Ministry of Transport, may in any proceeding—civil or criminal—be relied upon by any party to the proceeding as tending to establish or negative any liability which is in question to those proceedings. This helpful advice is found in Section 45 of the Road Traffic Act, 1930, and affects all road users.

6. The penalty imposed for a breach of this Section is 40s.

A synopsis of this Section can be constructed as follows:

Penalty	—	40s.
Place	—	Street—a place to which the public have right of access.
Arrest	—	Constable or Officer appointed may arrest without warrant, if committed within his view.
Person	—	Driver or Rider.
Conveyance	—	Carriage, Horse or Cattle.
Offence	—	Annoyance, Obstruction or Danger to Residents or Passengers. Drives or rides furiously.

(*To be continued*)

Offences and Case Law

By A Borough Chief Clerk

V.—RAPE

RAPE is a felony at common law, but the punishment is statutory. It is not triable at quarter sessions.

Rape is defined at common law as:

(a) the unlawful carnal knowledge of a woman, without her consent, by force, fear or fraud.

The punishment for rape is contained in Section 48 of the Offences Against the Person Act, 1861, which states that: "Whosoever shall be convicted of the crime of rape shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life" (penal servitude is now replaced by imprisonment by section 2 of the Criminal Justice Act, 1948, which abolishes penal servitude).

In *R.* v. *Phillips* (1839), 8 *C. & P.* 736; and *R.* v. *Jordan* (1840) 9 *C. & P*, 118, it was decided that in charges of rape and assaults with intent to commit rape, the law presumes that there is wanting in a person under fourteen the physical ability necessary to enable him to commit the offence, and that evidence is not admissible against him to show that in fact he has attained the full state of puberty, and was capable of committing the crime. A boy under fourteen may however, be a principal in the second degree, and a woman may also be convicted as a principal in the second degree (*R.* v. *Ram* (1893) 17 *Cox* 609). A husband may be a principal in the second degree if he is present aiding and abetting another to commit a rape upon her. However, as a general proposition it might naturally and correctly be stated that a man cannot be guilty of a rape upon his wife, but that is certainly not, without qualification, or in all circumstances, an accurate statement of the law, as the recent case of *R.* v. *Clarke* (1949) 2 *All E.R* 448 (reported at page 256 of Vol. XXII, No. 4 of The Police Journal) has shown. In this case the first count of an indictment charged a husband with a rape on his wife. Husband and wife, had, in effect, been separated by an order of the magistrates on the ground of the husband's persistent cruelty, previous to the alleged rape, and the order was to the effect that the wife was no longer bound to cohabit with the husband. The trial judge at the assizes explained that the position was that the wife, by process of law, namely, by marriage, had given consent to the husband to exercise the marital right during such times as the ordinary relations created by the marriage contract subsisted between them, but by a further process of law, namely, the justices' separation order, her consent to marital intercourse was

revoked. The husband was thus not entitled to have intercourse with her without her consent and therefore, if the husband had intercourse with his wife against her will and by the use of force he could be guilty of rape.

"*Carnal knowledge*"

Section 63 of the offences against the Persons Act, 1861, states that wherever upon the trial for any offence punishable under that Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Prior to the passing of the offences against the Persons Act, 1861, it had been held in *R.* v. *Jennings* (1835) 4 *C. & P.* 249; *R.* v. *Cox* (1836) 5 *C. & P.* 297 and *R.* v. *Allen* (1840) 9 *C. & P.* 31; that even though the circumstances be proved to have been such that no emission did or could take place, the offence is complete if the penetration is proved.

Penetration to some extent must be proved (*R.* v. *Lines* (1844) 1 *C. & K.* 393), but any, even the slightest penetration will be sufficient. Where a penetration was proved, but not of such a depth as to injure the hymen, still it was held to be sufficient to constitute the crime of rape, and proof of the rupture of the hymen is unnecessary (*R.* v. *M'Rue* (1839), 8 *C. & P.* 641; *R.* v. *Allen* (1840) 9 *C. & P.* 31; *R.* v. *Hughes* (1840) 9 *C. & P.* 752).

Section 9 of the Criminal Procedure Act 1851, provides for the conviction of the prisoner for an attempt to commit a rape if actual penetration is not proved, but all the other essentials of the offence are proved and in *R.* v. *Hapgood* (1870) 39 *L.J.* 83 and *R.* v. *Wyatt* (1870) 39 *L.J.* 83, it was decided that where a person is charged with rape but found guilty of the attempt, a person charged with aiding and abetting in the principal offence may likewise be found guilty of aiding and abetting the attempt.

"*Without her consent*"

The consent of a woman is a complete defence to a prosecution for rape, and in all cases of unlawful carnal knowledge of girls under the age of sixteen, consent is no defence. If there is no consent, the crime is rape.

While consent of a girl under sixteen is no defence to a charge of carnal knowledge under Section 5 (1) of the Criminal Law Amendment Act, 1885, it was held in *R.* v. *Harling* (1938) 1 *All E.R.* 307, that in a case of rape of that girl the prosecution must prove that she did not consent, and that the crime was committed against her will, but in many cases they would not need to prove much more than the age of the girl.

It is rape if a woman consents through duress or fear of death. (*R.* v. *Hallett* (1840) 9 *C. & P.* 748).

Where a woman was given liquor merely for the purpose of exciting her, but the liquor made her drunk, and connection took place when she was in a state of insensibility from the liquor, the prisoner was convicted of rape. (*R.* v. *Camplin* (1845) *L.C. & K.* 746).

So also where a man got into bed with a woman while she was asleep and had connection with her while in that state, he was found guilty of rape. (*R.* v. *Mayers* (1868) 12 *Cox* 311).

In the case of *R.* v. *Young* (1877), 14 *Cox* 114, a married woman was awakened by the prisoner having connection with her. She at first thought he was her husband, and finding her mistake, called out to him, when the prisoner ran away, and it was held that he was guilty of rape. Any doubt about that being an offence is now removed by Section 4 of the Criminal Law Amendment Act, 1885, the last paragraph of which states that " whereas doubts have been entertained whether a man who induces a married woman to permit him to have connection with her by personating her husband is or is not guilty of rape, it is hereby enacted and declared that every such offender shall be guilty of rape."

In *R.* v. *Case* (1850) 14 *J.P.* 339, a medical man obtained connection with a young girl by the false pretence that he was treating her medically, and the child made no resistance simply because she believed that he behaved as he did for the purpose for which he said he was so behaving.

R. v. *Flattery* (1877) 2 Q.*B.D.* 410, was a case where the prosecutrix, a girl of nineteen, consulted the prisoner, a quack doctor, with respect to an illness from which she suffered and he advised a surgical operation, and under pretence of performing it had connection with her, she submitting to what was done, not with any intention that he should have connection with her, but under the belief that he was merely performing a surgical operation, that belief being wilfully and fraudulently induced by the prisoner, it was held that he was guilty of rape.

In the case of *R.* v. *Field, The Times*, May 5th, 1892, the defendant was indicted for rape on his wife's sister. The defendant was in delicate health and made a statement to his wife as to something which he said would cure him. His wife repeated this statement to her sister, who in perfect innocence went into the defendant's room, thinking it would save his life, and the matter then occurred which formed the subject of the charge. The wife's sister said she did not know what was meant and if she had known she would not have

consented. The jury found the defendant not guilty of rape, but guilty of unlawfully by false representation, procuring the girl to have relations with him.

That a consent or submission obtained by fraud is not a defence to a charge of rape was upheld in *R.* v. *Williams* (1923) 87 *J.P.* 67. In this case the appellant was convicted of the rape of a girl who stated in evidence that she went to the appellant to have her voice trained for singing, that he told her that her breathing was at fault, and that he would give her certain treatment to put it right. Under the pretence of " making an air passage " he had sexual intercourse with her, and she consented to his doing so in the belief that he was treating her for singing and that what he was doing was not wrong.

A person is guilty of the offence of rape who has connection with a girl of imbecile mind and incapable of giving consent from defect of understanding, or with a girl in such a state of idiocy as to be incapable of expressing either consent or dissent. (*R.* v. *Fletcher* (1859) 8 *Cox* 131; *R.* v. *Fletcher* (1866) 10 *Cox* 248; *R.* v. *Barratt* (1873) 12 *Cox* 498; *R.* v. *Pressy* (1866) 10 *Cox* 635.) All these cases agree on the principle and only differ as to the amount of evidence of consent which must be adduced.

The mere fact that a woman is a prostitute does not mean that she is assumed to consent to all acts of intercourse, although obviously it will be easier for evidence of consent to be believed, if it can be shown that she is a prostitute.

The prisoner may give evidence that the prosecutrix is a woman of notoriously bad character for want of chastity or common decency, or that she has had connection before with the prisoner himself.

(*R.* v. *Riley* (1887) 18 Q.*B.D.* 481.
R. v. *Hodgson* (1812) *R. & R.* 211.
R. v. *Clarke* (1817) 2 *Stark C.C.* 241).

The prosecutrix may on cross examination be asked whether she has had connection with men named to her other than the prisoner, but if she denies having done so, those men cannot be called to contradict her, and the cross-examining party is bound by her answer. (*R.* v. *Holmes* (1871) *L.R.* 1, *C.C.R.* 334.)

In general, by the Criminal Evidence Act, 1898, section 1, if an accused person by the nature or conduct of his defence makes imputations on the character of the prosecutor, he may himself be questioned about his own bad character and previous convictions. At first sight it may appear that the very act of pleading consent as a defence does make such an imputation, in that it implies that the prosecutrix is an immoral woman who consented to intercourse instead of a virtuous woman who resisted it. However, it was decided by *R.* v. *Turner* (1944) 1 *All E.R.* 599, that where on a charge to which consent is a defence, *e.g.* rape, the accused alleges that the woman consented to the act, the nature or conduct of such defence does not involve imputations on her character, and thereby deprive him of the protection of the proviso to section 1 of the Criminal Evidence Act, 1898, provided his questions and answers are directed to proof of that consent, and the proper course is to obtain the ruling of the court before embarking on the cross-examination.

Statements made after the transaction are generally irrelevant and inadmissible in favour of the person making them, but in cases of rape they are admissible. Both the fact and the particulars of the complaint are admissible. The complaint must be shown to have been made as speedily after the act complained of as could reasonably be expected. The fact that the complaint has been made in answer to a question does not of itself render it inadmissible, but it must not have been elicited by questions of a leading and inducing or intimidating character. The complaint is not evidence of the truth of the matters stated, but only (*a*) of the consistency of the complainant's conduct with the story she has told in the witness box, and (*b*) as negativing consent where that fact is in issue.

(*R.* v. *Lillyman* (1896) 60 *J.P.* 536.
R. v. *Osborne* (1905) 69 *J.P.* 189.
R. v. *Norcott* (1917) 81 *J.P.* 123.
R. v. *Camelleri* (1922) 86 *J.P.* 135.
R. v. *Wannell* (1922) 87 *J.P.* 48.
R. v. *Cummings* (1948) 1 *All E.R.* 551).

Such complaints, however, cannot be regarded as corroboration of the story of the prosecutrix and it is a misdirection to refer to it as such. (*R.* v. *Coulthread* (1933) 97 *J.P.* 95.)

Though corroboration of the evidence of the prosecutrix is not essential in law, it is, in practice, required, and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony, particularly where the issue is consent or no consent; and even where there is such a warning, but matters are suggested as being corroborative which are not in fact so, the conviction may be quashed, in a proper case, on appeal.

(*R.* v. *Graham* (1910) 74 *J.P.* 246 (*C.C.A.*).
R. v. *Crocker* (1922) 87 *J.P.* 44.
R. v. *Whitehead* (1929) 92 *J.P.* 197).

Under the Criminal Evidence Act, 1898, section 1, the wife or husband of the defendant may be called as a witness for the prosecution or defence in cases of rape, and without the consent of the defendant. Whilst the husband or wife are competent to give evidence they are not, however, compellable (*R.* v. *Leach* (1912) 76 *J.P.* 203).

It is provided by section 9 of the Criminal Law Amendment Act, 1885, that if upon the trial of any indictment for rape, the jury shall be satisfied that the defendant is guilty of an offence under sections 3, 4, or 5 of that Act (procuring defilement by threats, fraud or drugs; defilement of girl under thirteen; defilement of girl between thirteen and sixteen, or of idiot or imbecile woman), or of an indecent assault, but are not satisfied that the defendant is guilty of the felony charged in such an indictment, or of an attempt to commit the same, then and in every such case the jury may acquit the defendant of such felony and find him guilty of such offence as aforesaid, or of an indecent assault, and thereupon such defendant shall be liable to be punished, in the same manner as if he had been convicted for such offence as aforesaid or for the misdemeanour of indecent assault.

Where a man charged with rape is acquitted of that offence, he cannot be convicted of a misdemeanour under Section 5 (1) of the Criminal Law Amendment Act, 1885 (defilement of girl between thirteen and sixteen) if the limitation of twelve months from the commission of the offence, as imposed by that section, have expired (*R.* v. *Cotton* (1896) 60 *J.P.* 824).

Likewise under section 4 of the Punishment of Incest Act, 1908, there is power on indictment for rape to convict of incest; and section 56 of the Mental Deficiency Act, 1913, gives power on indictment for rape to convict of unlawful carnal knowledge or attempt to have unlawful carnal knowledge of any woman or girl under care or treatment in an institution or certified house or approved home, or while placed out on licence therefrom or under guardianship under the Mental Deficiency Act, 1913.

It is a misdemeanour under section 38 of the Offences against the Person Act, 1861, to assault with intent to commit the felony of rape. The prisoner on this indictment may be convicted of a common assault, and if the indictment contains a second count for common assault and consent is established on the first count, the prisoner cannot be convicted on the second. (*R.* v. *Meredith* (1839) 8 *C. & P.* 589.)

In the case of *Director of Public Prosecutions* v. *Beard* (1920) 84 *J.P.* 129, the defence of drunkenness in a case of murder came before the House of Lords. The accused was guilty of rape upon a child whom he had suffocated by placing his hand over her mouth and squeezing her throat in order to prevent her from screaming. As he was not too drunk to form the intention to commit rape, he was held guilty of murder because where death occurs from an act of violence done in the course, or in furtherance of the crime of rape, it is murder.

A similar case was that of *R.* v. *Stone* (1937) 3 *All E.R.* 920, where the accused had not, however, completed the crime of rape and therefore, could only have been convicted of an attempt to commit rape if charged with that offence. He was held guilty of murder because he formed the intention to commit rape upon his victim and killed her, and the fact that he had no intention to kill was immaterial.

Section 23 of the Firearms Act, 1937, provides that if any person at the time of his committing, or at the time of his apprehension, for rape, has in his possession any firearm or imitation firearm, he shall, unless he shows that he had it in his possession for a lawful object, be guilty of an offence, and on conviction on indictment thereof shall be liable to imprisonment for a term not exceeding seven years in addition to any penalty for the offence of rape.

A wife may petition for divorce on the ground that her husband has since the marriage, been guilty of rape. (Supreme Court of Judicature (Consolidation) Act, 1925, section 176 as substituted by the Matrimonial Causes Act, 1937, section 2.)

The Colonial Police and Riots

By H. CONWAY
Assistant Superintendent, Aden Police

IN England a riot is so rare an occurrence that there are probably few serving police officers who have had experience of one in their own land. It is sufficient to state this fact without mentioning the obvious reasons for it. In the Colonies, however, riots erupt from time to time and most Colonial Police Forces are trained and equipped to deal with them.

In many Colonies there are mixed populations, not always tolerant of each other, so that racial and religious differences are frequent causes of riots. When animosity is aroused over a particular racial or religious matter, or when an aspect of Government policy engenders the hostility of a community, the Police may be prepared for trouble; and a riot arising out of any of these circumstances will usually be anticipated by them. But unforeseeable incidents (such as that alleged to have started the recent Durban riot), false rumours, distorted reports and even innocent wireless news can also provide the spark which so easily fires simple and excitable people not adverse to using violence.

The Colonial Police Service, therefore, has always to be prepared to meet, counter and overcome mob violence. Whether a riot is indicated by the course of events or is unforeseen, it will be a test not only of the training, equipment, readiness and efficiency of the Police as a force but also of the ability of its professional superior officers to handle awkward, if not dangerous, situations promptly and properly. Upon the rightness of their decisions and actions many lives may depend.

Since a riot is an unlawful assembly in a particular state of activity it is important for the Police, when faced with an unlawful assembly, to disperse it before it can begin to use force in pursuance of its object. How to do this will depend upon the size, demeanour, location and purpose of the assembly, the number of police available to deal with it, their accoutrements, and the correct assessment of the situation by the responsible police officer. If he use too little force it may be interpreted as weakness and hesitancy, or even as implying sympathy with the cause of those assembled—thus precipitating a riot. If he use too much it will be resented and may have the same disastrous result.

When Police have to deal with an unlawful assembly it will rarely suffice for them to interpose themselves as a physical barrier between hostile parties, or to rely upon the presence of reasonable leaders in calming an excited crowd. Firm persuasion by the Police themselves may succeed, but assuming that a riot occurs there are three recognised ways by which they may quell it. They may make a foot or mounted baton-charge, or use tear smoke, or open controlled fire. If an unlawful assembly develops into a riot along more or less preconceived lines the Police may adopt each of these methods in turn, but they may be confronted with a situation which demands immediate firing. It is for the responsible police officer to decide upon the minimum force needed to stop the riot.

If a baton-charge is expedient it should be vigorously but not brutally delivered, the Police taking care to keep their formation almost shoulder to shoulder, not to become isolated in the mob, and not to pursue offenders up side streets.

Some Colonial Police Forces are equipped with tear smoke weapons. These are employed when a baton-charge would not meet the needs of the situation, or when it has proved ineffective, and the position is not serious enough to warrant firing. The use of this smoke, however, may depend upon the direction and constancy of the wind and upon other contingencies. If circumstances favour its use it has the merit of temporarily incapacitating some of the rioters, thus enabling them to be arrested without physical injury.

As a last resort Police may open controlled fire to break up a riot. When a police officer considers that the situation can be restored only by the use of firearms he should so advise the magistrate (assuming that one is present or can be swiftly communicated with). The magistrate reads the Riot Act and if this is unheeded he instructs the Police to restore order by the use of firearms. It is possible that the reading of the Act, or the actions of the Police in preparing to fire, may have the desired effect. If it does not the police officer must detail unmistakably those of his men who are to fire. He must see that there is no erratic or deliberate firing over the heads of the crowd, as this endangers innocent persons and encourages the rioters. Particular ringleaders must be picked out and firing aimed to kill them. If this is unsuccessful the Police may fire on the crowd, aiming at their knees, and the officer must order it to cease when he is satisfied that there is no longer any need for it. During all these moments of intense activity, in whatever phase of a riot, he must ensure as far as possible the reasonable protection of his men who may be vulnerable to stoning, sniping, or other forms of attack from any direction, including rooftops.

This is merely an outline of some of the ways in which Colonial Police Forces fulfil one of their duties unaided—that of trying to prevent a riot, and of restoring order when it has been broken by some grave outburst of violence. Police experience in the Colonies has repeatedly shown that rioters have little regard for the sanctity of human life, and that a mob commits outrages of which few individuals in it would be capable. It is important to remember this and not to be too reluctant to take firm action when a situation requires it. It is true that this may result in the death or injury of some rioters, but if it is shown that it killed the riot, re-established peace, and protected law-abiding citizens, no police officer need fear the findings of a commission of enquiry.

Diamonds

By Asst. Superintendent T. J. CLOGGER
Illicit Diamond Branch, Police Headquarters, Tanganyika

DIAMONDS are of immense importance in the world to-day. They are being accumulated as a hedge against war and the ever-increasing evil of inflation. In practically every mass exodus of refugees from the European zone it was noted that diamonds were almost the only form of valuables carried. In the Middle East diamonds have been used during the last six years for the purchase illegally of war materials and munitions.

Various pointers have been given as to the scope and magnitude of illegal trafficking in stones—the aeroplane which crashed in England last year, and after the crash the Police found diamonds scattered over a wide area—the recent Hatton Garden scandal, and the activities of Nazi agents in South Africa during the war years.

With the superseding of gold by diamonds and the immensity of Black Market dealings on a world-wide scale, diamonds are the only stable currency of the underworld and the criminal fraternity, and vast smuggling rings are in existence (*a*) to collect and organise a steady flow of illegal stones, and (*b*) to organise and control the channels along which the stones flow from the diamond-producing areas to India, the Balkan countries, the Middle East, Amsterdam, England and America.

History

A thousand years ago diamonds were worn rough or badly cut, just as they were dug out of the beds. They were then called point-diamonds or ingenuous-point diamonds. Without the aid of polishers they gave forth but a faint twinkle. Later they were rubbed with their own dust, and began to reflect rays of light; soon the lapidaries began to table-cut the stones and to give them regular facets. In 1456 Lodewijk (Louis) Van Berghem invented two wheels destined to perfect this method; his descendant, Robert, claimed to have found the definite cutting process, which the Dutch practised first in roses before applying it to brilliants. The industry was thus started in Antwerp, which before the late war was still the biggest centre for diamonds in the world.

Newton thought the diamond was a form of coagulated oil; Lavoisier wondered if they were not rather a pure water congealed by the ages. However, most modern scientists agree in the opinion that the diamond crystallised from a dense liquid. The process of formation must have taken place at extreme depths and under immense pressure in the glowing earth matrix.

Diamonds have also been found in meteorites. Meteorites consist of the same substances as the earth, *viz.* iron, carbon, nickel, zinc, etc. The molten mass, when drawn towards the earth by the earth's magnetism, is cooled down when coming in contact with the belt of air surrounding the earth and forms a steel shell. The inside of the meteorite still being in a molten state at a terrific temperature creates an enormous pressure against its outer shell and crystallises the carbon into pure diamonds.

Location

Diamonds are to be found in a great number of widely distributed places in the world. Although South Africa, East Africa, the Belgian Congo and the Gold Coast are now the most important production centres for diamonds, they were not the first districts in which diamonds were discovered. Nearly all diamonds of ancient times were found in India, such, for instance, as the famous "Koh-i-Noor," the "Pitt," and the "Regent." The "Great Mogul" was found in the "Koltur" mines somewhere about 1650 ; it is reputed to have originally weighed 787½ carats. During the seventeenth century the Indian mines were almost exhausted. Yet India held a monopoly as the only diamond-producing centre until 1725, when the Brazilian diamond fields were discovered. In 1772 the Portuguese Government declared the digging of diamonds a Royal monopoly, a monopoly which continued until the separation of Brazil from Portugual in 1834, when the Republican Government granted mining concessions to anyone who could afford to pay the taxes.

Diamonds were discovered in the yellow ground in South Africa in 1867 and digging started in great circular deposits. These were worked down to unheard-of depths, such as at Kimberley.

In 1940 a Dr. J. T. Williamson discovered a diamond-bearing strata in Tanganyika. Starting from a small beginning the mine to-day covers several square miles and is reputed to be the largest diamond mine in the world.

British Guiana produces a small amount of diamonds of high quality, used mainly for ornamental jewellery.

In 1908 diamonds were found in the sands of South West Africa, then a German colony. The considerable discoveries at that time threatened the English diamond monopoly.

Identification

The diamond consists of pure crystallised carbon, and is the hardest of all known substances. No satisfactory method has yet been devised of ascertaining its exact hardness.

The chief properties of diamonds are: (*a*) Hardness; (*b*) Lustre; (*c*) Crystal form.

Hardness

To differentiate between a diamond and a piece of glass or quartz, rub the suspect stone with a file or a piece of corundum hone. The glass or quartz will scratch, a diamond will not. Great care must, however, be taken to brush off the white powder resulting from the test and to examine the surface of the stone with a magnifying lens to make sure it really is scratched.

Lustre

The high refractive index of the diamond distinguishes it from quartz or glass, or what are commonly termed brilliants. If glass or quartz is placed in water, the outline of the mineral is almost lost, whereas both diamond and zircon maintain a brilliant lustre and sharp outline under water.

Zircon is the nearest of natural gems to approach the diamond as a substitute. Its brilliance and fire have helped it to be passed off successfully as a diamond.

Crystal form

The diamond crystal does not conduct electricity but has good heat conductivity and, in contrast with glass imitation, is cold to the touch, or when tested with the tip of the tongue. The commonest shape is that of an octahedron (a symmetric body with eight faces and six corners). A simple test of the crystalline structure is by placing a diamond on a sheet of glass over a strong light, or by placing it on the flat outer covering glass of an electric torch.

In addition to the above tests, it is pointed out that rough diamonds, that is stones that have not been polished or cut, are greasy to the touch and have a frosted look with their dull coating. If a diamond is breathed on, the resultant mist quickly vanishes.

Expert advice can quickly be obtained from the Precious Stone Laboratory (the only one of its kind in the country), 55 Hatton Garden, London, E.C.1.

Trafficking

Places of concealment for diamonds are practically inexhaustible, and with the rapid growth of means of communication it is almost impossible to stop the movement of illegal stones.

The only weapons against a highly organised industry are those of patience and thoroughness when a search does take place.

If during a routine police search, graduated metric or carat scales (used for weighing diamonds) are found, or magnifying lens of high power, or chips of corundum in a place where normally they would not be used, then a thorough search should be carried out for illegal stones, or conversely a watch kept upon the premises.

Police officers of other Colonial territories are aware that native carriers of diamonds frequently bury their stones, usually stolen from the mines where they work, in the earth of their domiciles. If the floor of the suspect house is of beaten earth, pour a quantity of water upon the floor. Where any spot has been recently dug and beaten down the water will quickly penetrate.

When photographing diamonds, use a black background, place the diamonds in a refrigerator or ice-box, leave for a while, then remove and photograph immediately.

Diamond Substitutes

The nearest of natural gems to approach the diamond is the white zircon, whose brilliance and fire, compared with other transparent gems, have helped it to be passed off successfully as a diamond. One specimen, mounted in platinum, was bought by a jeweller for £50; the stone was actually worth £1.

White sapphires are to-day increasingly being used in pieces of jewellery set with real diamonds. Such prepared pieces find a ready sale among the new rich of the Black Market.

The Board of Trade recently issued a warning against the diamond doublet. This, not in itself a fraud if openly so described, is a device of ancient lineage; jewellery of centuries ago shows its employment, the backing of a front of diamond with another clear transparent material, which may be quartz or even glass.

To improve the colour of diamonds, in an attempt to deceive the jeweller, a common trick is the painting on of a thin wash of blue colour. Sometimes this is so adhesive that even a dipping of the stone into methylated spirit will not remove it, and the expert has to resort to washing in acid.

In a Criminal Appeal case heard before the High Court of Tanganyika, a person was charged with attempting to sell diamonds (an offence against the laws of the Territory). In this case it was found that the 'diamonds' were actually glass.

The learned Judge commented as follows:

". . . the law in Tanganyika is the same as the law in England on this point. In section 380 Penal Code the word 'attempt' in its criminal legal sense is defined and it is stated, *inter alia*, that 'it is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.' The circumstances not known to the offender in this case which made the commission of the offence impossible were that the 'diamonds' he had bought from somebody else and was trying to sell at a profit to Mr. Fancy were really bits of glass.

"The principle involved, then, seems to be that in deciding whether a certain action constitutes an attempt to commit an offence against the law one must look to the doer's intention and to think what he is doing when he begins to carry it out. Just as in *Rex* v. *Brown* it was held to be an offence for a woman to take a quite harmless drug because she believed she was taking a noxious one in furtherance of her intention to cause her own abortion, so in the present case the appellant must be held to have committed an offence because he intended, without licence or authority, to sell diamonds and believed that the objects he was trying to sell to Mr. Fancy were in fact diamonds.

"I find therefore that in this case the appellant was rightly convicted by the learned magistrate of attempting to sell diamonds, though the 'diamonds' he tried to sell were only worthless pieces of glass."

Police Methods

A relentless and bitter struggle is carried on by the police forces of Tanganyika, Union of South Africa, Kenya and Uganda Territories against illicit diamond traffic.

'Trapping' is the commonest form of police activity—that is the use of the *agent provocateur*. 'Trap' stones are sold to known illegal diamond buyers, and after two or three phases of selling stones he is arrested. The two or three phases are used in order to offset and rebut any plea of temptation.

The evil of illegal diamond trafficking is well illustrated in the closing address of the Tanganyika Crown Counsel during a recent case involving the seizure (without trap) of a considerable number of stones. He said:

"With respect to the adverse effect on the war effort to which a learned Judge drew attention during a diamond smuggling case during the war years—is paralleled in 1948 by the adverse effect on the economic recovery programme. The value in dollar currency of the diamonds exhibited before your Lordship in the present case (£7,500) represents the equivalent of the profits on a considerable number of motor-cars or other manufactured commodities. It is plain that the illicit traffic of which their possession and export are an example constitutes a threat to the well-being and security of all of us who live in the sterling area. In addition, a pernicious traffic of this kind must inevitably lead to a regrettable decay in morals, to distrust and suspicion between man and man, and to much incidental crime."

Latent Fingerprint Developers

By Detective Chief Inspector COLIN CAMPBELL
Lancashire Constabulary Fingerprint Bureau

HYDRARGYRUM-CUM-CRETA as a medium for developing latent fingerprints was recommended by Henry (1905)[1] in the early days of the science. Its use for this purpose has become world wide and, incidentally, it had been the standard fingerprint powder of the Lancashire Constabulary since 1936. The powder is prepared by trituration of one part by weight of metallic mercury and two parts of chalk in a mortar.

To develop latent finger or palm prints, the powder, which is light grey in colour, is dusted on suspected glass, metal or any smooth, non-porous surface of a contrasting colour. If latent prints exist the powder will usually adhere to the slightly greasy deposit from the papillary ridges. The surplus powder is then removed from between the ridges, thereby rendering the prints visible and easy to photograph. The powder is most frequently applied with a camel-, squirrel- or sable-hair mop. Insufflators have also been used.

Hydrargyrum-cum-creta has not been considered completely satisfactory for some time, and over a long period extensive research has been made in the field of latent fingerprint developers. During the research, Dr. J. N. Aldington, of Preston, was consulted on ultra-violet light sources and fluorescence. He was the first to suggest the risk of chronic mercury poisoning in fingerprint work, and as a result the Department for Research in Industrial Medicine, of the Medical Research Council, was asked for their views. Dr. J. N. Agate, of that department, expressed the opinion that there existed a definite hazard which had not been recognised before. The possibility of chronic mercury poisoning was reported to the Chief Constable of Lancashire, who immediately asked Dr. Agate to make a full investigation.

Accordingly Dr. Agate and one of his colleagues made an investigation, and the results prove that there is an undeniable risk of chronic mercurialism attached to the use of hydrargyrum-cum-creta for fingerprint work. He did, in fact, diagnose chronic mercury poisoning in several members of the Lancashire Constabulary, and although the cases were not severe compared with cases encountered in industry, mercurialism was present to such an extent that the doctor expressed the opinion that the use of hydrargyrum-cum-creta should be abandoned. The difficulty which this step would involve was at length overcome, and it is claimed that a more efficient powder has been discovered. The new powder does not contain mercury.

"Chronic Mercury Poisoning" Described

It has long been known that mercury is poisonous and that persons with frequent exposure to it are liable to disease. This knowledge dates back to Roman time. Pliny the elder (A.D. 23-79) writes of mercurialism suffered by slaves in the quicksilver mines of Spain. Fallopius (1523-1562), Mattioli (c. 1545), de Lussien (1719) and Kassmaul (1861) all referred to mercurialism in free and slave labour and recognised it as an occupational disease.

Nine hundred persons suffered from mercurialism in 1804 when fire broke out in an Austrian quicksilver mine. On this occasion the mercury vapour escaped over a wide area, and it is reported that mercurialism caused cows in the same district to suffer from salivation and abortion. In 1810, mercury containers broke in the hold of a ship with the result that passengers were affected, three of the crew died of mercurialism, as did all the birds and cattle aboard.

Hatters used mercuric nitrate to process animal fur in the making of fur felt (Hamilton, 1925),[2] and it was as a result of their symptoms of chronic mercurialism that the term "hatters' shakes" came into use. It is well established that the disease is evidenced in workers with metallic mercury and its inorganic salts. Some of the occupations in which the disease occurs are the recovery of the metal from ore, gold and silver gilding with amalgams of mercury, the bronzing of field glasses, the manufacture of barometers and thermometers (Neal and others, 1941),[3] the manufacture of surgical dressings containing mercury, the manufacture and use of laboratory apparatus (Christensen and others, 1937)[4] and some types of photo-engraving.

The symptoms of the disease are *erethism, stomatitis* and *mercurial tremor*. *Erethism* is a psychological state and exhibits itself by timidity, readiness to blush, embarrassment in the presence of strangers, dislike of being watched at work, resentment of authority, feeling of inferiority, depression, dissatisfaction and insecurity. *Stomatitis* is exhibited by retracted, spongy and bleeding gums; the teeth may become loose or fall out and there may be evidence of halitosis and increased salivation. *Mercurial tremor*, the final and most characteristic symptom, is of the coarse and intention type (Agate, 1949). The tremor as a rule first manifests itself in the extremities, mostly in the fingers. It may affect the fingers or hands of one or both arms. As it becomes more severe it affects the tongue, lips and eyelids and may travel to other muscles in the body. In very severe cases the tremor affects the lower limbs, and the patient has the greatest difficulty in walking.

Buckell and others (1946)[5] claim that it is difficult to distinguish erethism from shyness or anxiety neurosis; stomatitis from pyorrhœa or gingivitis, and mercurial tremor from other causes. It will be seen then, that if a patient does not inform his doctor of his exposure to metallic mercury in its liquid or vapour phase there is a danger that the doctor, through no fault of his, will wrongly diagnose the disease. A patient may be using metallic mercury in a form in which he does not recognise it. An instance has recently come to light where a detective sergeant in a small county force used hydrargyrum-cum-creta for many years. He was in the habit of purchasing it from a well-known firm of manufacturing chemists who labelled it "Fingerprint Powder." The sergeant did not know that it contained mercury although when his jar of powder was nearly empty "small lumps of powder [*sic*] rolled about the bottom."

Medical Examination of Hydrargyrum-cum-creta Users in the Lancashire Constabulary

On April 22nd and 23rd, 1949, Dr. J. N. Agate attended at the Lancashire Constabulary Headquarters and examined 32 members of that force, all of whom volunteered for examination. These officers were in the habit of using hydrargyrum-cum-creta in their search for fingerprints at scenes of crime. All of them had been specially trained for the work and are members of the Criminal Investigation Department. They are stationed in various districts throughout the county; some are in busy districts and some in quieter districts. The exposure to mercury varied from man to man. When not engaged on fingerprint or photographic work they perform ordinary detective duties. Amongst the men examined were officers who had been engaged in the above duties for periods of from eight months to thirteen years.

After his examinations Dr. Agate[6] reported " . . . Thus, in general, the risk of disease depended upon the degree of exposure. An average exposure of 250 hours or more per year carries with it an undeniable risk. . . . There is good evidence of mercury poisoning in seven of the 32 men examined. An account of past events suggests that one or two cases may have gone unnoticed. There can be no doubt that the grey powder is the cause of the condition. It is therefore suggested that the use of the latter for demonstrating fingerprints should be abandoned, for, even if exposures could be reduced, there is the possibility that an unusually susceptible subject might be detailed to do the work and suffer in consequence. The use of gloves or masks cannot be considered a practical solution to the problem."

Agate and Buckell (1949)[7] say that the cause of chronic mercury poisoning in the police officers is due to the use of hydrargyrum-cum-creta. Absorption of the meicury may be by the inhalation of fine dust, but it is possible that some mercury vapour can be inhaled from the spillage. (Mercury vaporises at ordinary room temperature and the vapour too is poisonous.) He also suggests that some absorption can be through the skin of the hands or by transference by mistake to the mouth. Chronic mercury poisoning is to be distinguished from acute mercury poisoning: they are entirely different. In the latter, absorption is usually by the mouth.

On April 24th, 1949, the Lancashire Constabulary abandoned the use of hydrargyrum-cum-creta. A new powder which does not contain mercury or other poisonous ingredients, was taken into use.

History of the use of Hydrargyrum-cum-creta and Some Other Powders

Before going further, it may interest the reader to turn to the earliest days of the science of fingerprints and to study hydrargyrum-cum-creta and some other powders used in fingerprint work. The first man to recognise in fingerprints a means of detecting crime was undoubtedly Henry Faulds (1880)[8] who wrote: " When bloody finger-prints or impressions on clay, glass, etc., exist, they may lead to the scientific identification of the criminals."

Wilton (1938) says[9] that for nearly twenty years after 1880 this suggestion was disregarded, if not derided, in England. It is true that it was only in 1902 that fingerprint evidence was first given in an English court. A police officer from Scotland Yard gave evidence concerning the identity of a thumb print found at the scene of a crime and a thumb print of the accused. E. R. Henry (1900)[10] in his first edition of *Classification and Uses of Fingerprints*, did not refer to searching the locus for the culprit's fingerprints. It is also true that Faulds (1880) did not suggest any method of developing latent impres-

sions. On the other hand, Herschel (1880)[11] who used finger and palm prints in India as a means of preventing personation and repudiation of signatures in 1858, was neither then nor subsequently interested in the identification of fingerprints left at scenes of crime. Neither was Galton (1892)[12] who was primarily interested in personal identification and the classification of fingerprints. Galton's classification formed the basis of the system later devised by Henry.

Most of the early workers, interested only in the study of the science and in the comparison and classification of impressions taken direct from the epidermis of the fingers on to paper, glass and metal, used chemical methods of development. Herschel (1858)[13] in India, used an inking pad for this purpose ; but Aubert (1877))[14] although not interested in fingerprints as such, developed sweat marks with mercurious nitrate and with silver nitrate. Frecon (1899)[15] became aware of this and suggested mercurous nitrate as a means of developing fingerprints. Here, then, is the first reference to mercury in fingerprint work. Locard (1909)[16] also referred to mercurous nitrate.

Forgeot (1891)[17] suggested that sweat marks on glass should be developed and made permanent by exposing the glass to the vapour of hydrofluoric acid. He also referred to osmium acid and actually used silver nitrate to develop fingerprints on paper. As employed by these workers the above methods did not meet with much success, but it is interesting to note that silver nitrate solutions are still often used with advantage for developing latent prints on paper. Some workers have even claimed successes for silver nitrate in connection with prints on fabrics. Later, Prant (in Brünn, 1910) added alcohol to silver nitrate, and Paul[18] used an 8 per cent. solution of silver nitrate for developing prints; Niceforo[19] also referred to this chemical.

Galton (1892), for best results, used printer's ink rolled thinly upon a copper plate, but suggested that a simpler method was to impress the fingers on glass, steel or copper and examine or photograph them by reflected light. In 1892, therefore, Galton suggested a technique for dealing with near-visible sweat marks found at scenes of crime that finds favour to this day. This technique is still advocated by many experts and amongst them is Cherrill (1940),[20] who deprecates the application of powder to any sweat mark that can be seen with the naked eye. It is claimed that such a mark can easily be photographed by specular reflection, and that it is not wise to risk damaging or obliterating the mark by applying powder or brush. Henry (1934),[21] Duncan (1942)[22] and Bridges (1942)[23] also advocate this technique and say that *any* fingerprint which can be seen with the eye can be photographically recorded without powder. The writer has found that owing to unwanted reflections photographing an unpowdered sweat mark on a convex or concave surface can be particularly troublesome. As far as he is aware, he has never damaged a *sweat* mark on a non-porous surface by applying a good powder with a camel- or squirrel-hair brush. Powder is brushed on all sweat marks with complete confidence.

Strictly speaking, sweat from the thenar surface contains 98 per cent. water, and a stale mark made with sweat only would not respond well to development. However, even within a short time after they have been washed, the papillary ridges become impregnated with an oily viscid substance, sometimes called 'body wax.' The oil remains in a tacky state for a considerable time and allows of the development of latent impressions long after they have been made. For convenience the term 'sweat mark' is used.

In addition to Galton (1892),[24] Windt and Kodicek (1904)[25] advocated the use of reflected light for making the prints visible. Rosenthal (1899),[26] Fischer[27] and Locard (1909),[28] referred to Sudan Red III for colouring the grease on sweat marks, whilst Stokis (1906)[29] mentioned lycopodium with 10 per cent. of Sudan Red III. Faulds (1912)[30] suggested that carbonate of magnesia should be used.

Henry (1905),[31] in connection with latent fingerprints of criminals, caused the use of hydrargyrum-cum-creta on glass, wood and metal to be widely publicised. In the first edition of his work (1900) he did not refer to the development of latent impressions.

As far as Britain is concerned, from about 1905 hydrargyrum-cum-creta became the most widely used powder for developing latent impressions on non-porous, dark surfaces and for other surfaces which in monochrome would be photographically recorded in shades from grey to black.

About this time other powders came into use and two of the most popular were white lead and finely divided aluminium. White lead was recommended by Locard and Reiss, and it is still used by Locard (1949)[32] in France. It is also currently used in Denmark. Møller (1949)[33] says that it has been used there since 1920. Heindl (1949)[34] advises its use, but only for occasions on which impressions appear superimposed on both sides of clear glass.

Amongst the many who advise the use of finely divided aluminium, or argentorat, as a special compound is known, are Dr. Robert Heindl (1949)[35] of Munich, Waltman (1949)[36] of The Hague, and Reitenauer (1949)[37] of Württemburg. Argentorat is used by workers throughout the Continent and aluminium powder is also widely used in the United States of America. Dalstrom (1949)[38] of the National Institute of Technical Police, Sweden, advocates the use of one part of aluminium powder to 25 parts of lycopodium, and also refers to white lead for use on sticky surfaces. He says that argentorat must be used very carefully and in small quantities in order to avoid damaging the latent fingerprint.

Faults of Hydrargyrum-cum-creta, White Lead and Aluminium Powders

It had been found that hydrargyrum-cum-creta did not give good results on some types of surface. It is notorious that its efficiency can be seriously affected by its readiness to take up moisture from the atmosphere. The advocates of aluminium claim that the latter is not greatly affected by atmospheric moisture, that it adheres better to very smooth and highly polished surfaces, and that photographically it reflects more light than hydrargyrum-cum-creta. Against this, the advocates of hydrargyrum-cum-creta claim that aluminium quite often has a painting effect; that it adheres too firmly to the surface on which it is applied and that it frequently cakes between the ridges thereby obliterating valuable data.

The use of white lead for developing latent fingerprints is to be discouraged. It is well known as a cumulative poison, indeed Nyfeldt (1937)[39] reports a case of chronic lead poisoning in a police officer who used it.

In addition to Henry, some of those who prefer hydrargyrum-cum-creta are Battley (1930),[40] who says that it meets all necessary requirements; Gross (1934),[41] who says that it has been found most suitable; Nickolls (1936),[42] who says that good hydrargyrum-cum-creta gives excellent results; Glaister (1938)[43] refers to hydrargyrum-cum-creta as most commonly used for glass and coloured objects; Duncan (1942) says that it is usually employed and that finely divided metals are not always satisfactory. Hoover (1945),[44] speaking of the U.S.A., says that one of the powders in general use is hydrargyrum-cum-creta, and that it is used by the Field Divisions of the Federal Bureau of Investigation. Battley (1930) recommends the powder but warns that it is very susceptible to atmospheric conditions and must be kept dry, and Cherrill (1940) issues the same warning in recommending its use.

Amongst the many who advise the use of finely divided aluminium powder are the two Americans, Larson (1924),[45] who says that experience has shown it to be better than hydrargyrum-cum-creta, and Chapel (1941),[46] who recommends it and criticises hydrargyrum-cum-creta because it takes up moisture.

Some experts, one of whom is Bridges (1942),[47] suggest that the ideal is to carry a variety of powders and, by means of trial and error on the surface to be examined, the best powder for that particular surface will be found. Söderman and O'Connell (1935)[48] say that it is not important which powder is used as long as it is finely ground. Mitchell (1938)[49] says that a fine coal tar powder is commonly used, and Lucas (1945)[50] observes that any fine powder will give some result, but the best results are obtained with hydrargyrum-cum-creta, mag- nesium carbonate, white lead, etc. Bridges (1942)[51] writes of 50 different powders and gives 12 formulae. Nine of the formulae contain aluminium and two hydrargyrum-cum-creta. Cummins and Midlo (1943)[52] refer, as a matter of interest only, to the development of latent prints by the growth of bacteria. The prints were seeded by contact of the digit with the surface of a culture medium.

It will be seen from the foregoing that there is a considerable divergence of opinion as to what constitutes the best all-purpose light-coloured powder. It is estimated that 90 per cent. of all powder- ing done in Great Britain is with hydrargyrum-cum-creta, and at least 50 per cent. of the powder used in Canada and the United States is hydrargyrum-cum-creta.

Prior to 1936 the Lancashire Constabulary used finely divided aluminium, but in that year hydrargyrum-cum-creta was substituted. It worked with varying success. In 1949, however, the risk of chronic mercury poisoning was recognised and the search for a new powder was intensified. A satisfactory powder was eventually found.

Dissatisfaction felt with hydrargyrum-cum-creta was due to several causes. Firstly, its affinity for moisture, and in the humid atmosphere of Lancashire it is almost impossible to keep the powder dry for more than a few days under ordinary working conditions. Secondly, it could be considered only a poor developer of latent prints on many silver, chromium, cellulosed, lacquered, japanned and plastic surfaces. Thirdly, it had the unhappy property of forming unwanted amalgams with certain metals.

The first fault is well known and much attention has been drawn to it in the literature, but little or nothing has been said about the other two. If great care is not taken the makings of a clear impression can often be developed with hydrargyrum-cum-creta on chromium plate with the first sweep of the brush and will disappear when even a delicate stroke of the brush is used to clear it. The same thing has frequently occurred on silver, lacquer, cellulose and plastics.

Aluminium household articles and shop fittings have often been ruined with hydrargyrum-cum-creta. The mercury attacks the aluminium, causing a fungus-like growth. The phenomenon is due to the production of aluminium hydroxide which grows rapidly in moist air when the protective oxide on the surface of ordinary aluminium goods is ruptured by the presence of mercury amalgam. The surface is left pitted and scarred. The whole of a new aluminium built-in kitchen fitting—sink, draining board and cupboard doors—was recently spoiled by the powder in a north country borough. Chemical action sometimes causes hydrargyrum-cum-creta to etch prints into silver. It has been necessary to have silver cigarette cases, caskets, plate and

ornaments professionally polished before returning them to the owners.

The powder often forms an amalgam with the gold of rings, bracelets and plate and severe discoloration takes place. Some time ago a tearful old lady came to a police office. She had with her quite a collection of dull silver-coloured rings and bracelets which she claimed were gold before the detective examined her house for finger-prints. Now they were ruined! She had been rubbing and polishing them all day but it had no effect. The sergeant was very much impressed and tried without success to remove the discoloration. Having satisfied himself of the hall marks and that her house had been broken into, he put an urgent telephone call through to the Finger-print Bureau. A member of the staff left the bureau, taking with him a bottle containing a weak solution of nitric acid. On arrival at the police station he took the rings and bracelets into a quiet office where he immersed them in the solution for a few minutes. The gold and claw-set jewels glistened and sparkled as they had not done for many a year. The old lady was supremely happy and thanked the police for all the trouble they had taken!

Aluminium powder has faults which are seldom referred to. In addition to its liability to 'cake' on fingerprints it is very light and easily becomes air-borne: it will often adhere as firmly to the surface as it will to the latent print, and on many surfaces it is most difficult to remove without damage after it has been applied. Some time ago the powder was applied to an expensive, highly polished, walnut veneered sideboard. The aluminium had such a painting effect and clung so tenaciously that the sideboard had to be taken away for cleaning and re-polishing.

On a patchy sweat mark the application of aluminium can cause some trouble to the photographer. The powder under the microscope is seen to have a flake-like texture. This texture when applied to a surface by means of a brush will tend to have marked directional characteristics to incident light. The photographic definition pro-duced by contrast between the fingerprint dusted with aluminium powder and the background will therefore vary with the angle of incident light to a greater incident than will be the case with the new powder, the reflected light from which will be diffuse rather than specular. On many surfaces aluminium can be a troublesome factor which does more harm than good.

Since 1936 the loci of some 34,000 breaking offences have been examined for fingerprints in the Lancashire Constabulary police district and until recently more than 90 per cent. of the powder used was hydrargyrum-cum-creta. To avoid damage to articles and to prevent complaints from the public, and incidentally to preserve the good name of the force, certain rules were observed in applying it. Particular care was taken with metals. All things considered, it is remarkable that after 13 years the victims of crime still welcome the attentions of the fingerprint officer. During all the years there has not been more than one or two public complaints about the effect of the powder.

Lanconide, the New Powder

It was felt that for the time being the various methods adopted for the development of impressions on paper and light-coloured objects were quite satisfactory. Efforts were therefore confined to the finding of a powder, or mixture of powders, with all the best properties of hydrargyrum-cum-creta and aluminium and with none of their faults.

The following properties were wanted: (*a*) an affinity for sweat and viscid skin grease, (*b*) a firm and permanent adherence to sweat or grease, (*c*) the powder to develop prints on very highly polished or slightly greasy surfaces, (*d*) sharp, clear definition, (*e*) a powder with stable physical properties and one which would not be adversely affected by ordinary atmospheric conditions, (*f*) a powder which would be photographically as white as hydrargyrum-cum-creta, (*g*) non-poisonous, (*h*) non-injurious to the skin, metal, fabrics and furniture, (*i*) if possible, a better all-purpose powder than hydrargyrum-cum-creta, and (*j*) a powder not easily rubbed off once applied to a print.

During many months of research, in which scores of powders were tried, it became perfectly clear that no one powder would do all that was asked. Many mixtures were made, and after repeated trials and numerous tests the following formula was selected as giving the best results:

1 part zinc sulphide (pure) to sieve through 200 mesh sieve.
1 part zinc oxide (B.P.) to sieve through 200 mesh sieve.
1 part barium sulphate (pure) to sieve through 200 mesh sieve.
1 part titanium dioxide to sieve through 200 mesh sieve.
1 part bismuth oxychloride (B.P.) to sieve through 200 mesh sieve.
¼ part calcium carbonate (praecip) to sieve through 70 mesh sieve.

(*All parts to be by weight.*)

It is important that the qualities and grain size of the powders should be as given above, otherwise it can be expensive, poisonous and useless. For instance, the powder that is commonly known as fluorescent zinc sulphide, *i.e.*, luminous zinc sulphide, costs £10 per kilo or about £5 per pound weight. The commercial barium sulphate is poisonous to some extent. Many of the ingredients can be obtained in grain sizes so large that they will not adhere to even the greasiest of latent prints.

The new powder has been called *Lanconide*.[53] It has been used to develop latent prints at the loci of crimes in Lancashire since April, 1949, and it is claimed that it gives better results than hydrargyrum-cum-creta. It will develop stale marks which hydrargyrum-cum-creta will not; it will develop marks on greasy surfaces when hydrargyrum-cum-creta will 'paint' on the same surface; on a fresh, strong sweat mark Lanconide forms a clear, sharp image which, once it has 'set,' cannot easily be removed except by deliberate rubbing.

During the trial period the powder was several times applied to articles on which hydrargyrum-cum-creta had already been unsuccessfully applied. On these, Lanconide developed fingerprints, some of which were later identified. It is white in colour as against grey hydrargyrum-cum-creta; it is harmless to the skin, metals, fabrics and furniture. Although it would not be advisable to take a quantity of it by the mouth, used as a fingerprint powder it should be as innocuous as any powder can be. It takes up moisture from the atmosphere, but this has no adverse effect on it. In fact, it is a moot point whether or not it would be better to place freshly made powder in a humidifier and thus give it a certain amount of moisture. It is also claimed to react much better than hydrargyrum-cum-creta on chromium plate, highly polished metals, plastic, cellulose, lacquered and japanned surfaces. It can be applied with advantage to any surface on which hydrargyrum-cum-creta or aluminium would normally be used.

Lanconide has been used with success in developing and photographing fingerprints on multi-coloured surfaces. The powder, like many other inorganic substances, reacts strongly on the photographic emulsion when irradiated with ultra-violet light.

A word of warning. Lanconide does not cling to the whole of a surface to which it is applied, but only to moist or greasy areas. It has been found that there is a psychological effect when first it is used in so far that on a clean, fingerprint-free surface the user may think that it is not giving good results. A person strange to this powder would be well advised to make comparative tests, side by side with hydrargyrum-cum-creta. There have been some complaints that it does not cling well to a 14A wash brush when it is dipped in the powder. This to some extent is true. Although it does not appear so, the shaking density is almost equal to that of hydrargyrum-cum-creta, and in addition to this the coarse calcium carbonate has been added for its cleaning properties. The other powders have, *inter alia*, been selected because they will not usually adhere to smooth, dry surfaces. Special sable-hair brushes have been manufactured[54] for use with Lanconide, and it is anticipated that future criticism in this direction will cease.

If the powder is allowed to take up moisture from the atmosphere, and, as stated before, this does no harm, small lumps will appear to form. These are of no consequence for they will disintegrate at the touch of the brush. Lanconide, like all other mixtures, should be frequently stirred when in use. It is not recommended for use with an insufflator. It has been noticed that it forms a dense white water-paint when it is applied to or dropped on a wet surface. This is in the nature of things because some of its ingredients are known to paint manufacturers as "good covering powders." These are essential in a fingerprint powder, and naturally no powder should be applied to a wet surface. When dry the powder is easily cleaned from clothing, fabrics and furniture, and in actual fact it has been found less troublesome in this direction than hydrargyrum-cum-creta for the same reason that it does not cling quite so well to the brush. Any white 'paint' formed by wet Lanconide on non-porous surfaces can be easily removed by gentle application of moist cotton wool.

It is noticed that when fresly made, and for some time after, a faint yellow tinge sometimes appears in the powder. This disappears on agitation. The yellowness never appears after it has been applied to fingerprints; the prints are permanently recorded in white. The discolouration is a photo-chemical effect and is caused by the action of ultra-violet light on the zinc sulphide. Winter (1949)[55] writes of a photo-chemical effect in zinc oxide when used as a paint vehicle and when irradiated by ultra-violet light or after some hours' exposure to daylight. Over a period of four months a sample of Lanconide was exposed to daylight and to the radiations from medium-pressure mercury discharge Sieray MA/V lamps.[56] Temporary discolouration took place, but no appreciable decomposition occurred. Agitation restored the whiteness. The powder was as good at the end of the exposure as when it was freshly made.

Summary

It will be seen then, that as far as Great Britain is concerned, for the last 40 years hydrargyrum-cum-creta has been the most widely used light-coloured fingerprint powder. This powder has also been popular in America, although in that country and on the Continent it has had a serious rival in aluminium powder.

It is evident that neither hydrargyrum-cum-creta nor aluminium has been considered completely satisfactory as a latent fingerprint developer, since both have been subject to severe criticism. In 1949 it was discovered that hydrargyrum-cum-creta can cause chonic mercury poisoning in police officers who frequently use it.

Early in 1949 Lanconide was produced, and it is claimed to be a superior fingerprint powder to either hydrargyrum-cum-creta or aluminium.

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The Sending of Fingerprints by the Telephoto System

BY SUPERINTENDENT K. BRØGGER MØLLER
Fingerprint Bureau, Copenhagen

IT frequently happens that the Police arrest persons regarding whose identity there is considerable doubt. Moreover, such persons may be arrested on charges which do not warrant their detention until such time as their fingerprints can be searched at, and a reply received from, the Fingerprint Bureau. In many such cases, therefore, the criminal is released before information is received that he has been responsible for several acts of housebreaking.

The problem of quickly establishing the identity of such persons, especially those arrested at some distance from Police Headquarters, has been engaging the attention of the Copenhagen Bureau for some time, and one of the most successful measures so far tried has been the sending of fingerprints by the Telephoto System.

The technique is similar to that used by newspapers in sending photographs over long distances. Recently, a set of fingerprints was sent by this means from Copenhagen to Aarhus—a distance of 110 miles. The time taken was 10 minutes and the result was most satisfac-

tory. In the month of May 1948, a set was sent from London to Copenhagen. The time taken was about 10 minutes and the result satisfactory.

The equipment consists basically of a transmitter and a receiver, each complete with associated rack-mounted electronic apparatus. An amplitude-modulated form of transmission is employed, and facilities are provided for working over two-wire or four-wire circuits.

The equipment is designed for operation in full daylight, a dark room being necessary only at the receiving end for loading the drum and developing the picture of the fingerprint form.

The principle of operation is simple. Two drums, one on the transmitter carrying the fingerprint form and one on the receiver carrying sensitised paper or film, are rotated and traversed synchronously in front of suitable optical heads. At the transmitter, light reflected from a suitably illuminated area of the fingerprint form is selected by means of a lens and aperture and fall on to a photocell. As the fingerprint form is progressively scanned, variations in light and shade produce corresponding variations in photocell current which, after amplification, pass over the telephone line to the receiver, causing the deflexion of current-sensitive device carrying a mirror. This sweeps a beam of light across an aperture and progressively exposes the paper or film on the drum in sympathy with the received current. Besides the stationary transmitter and receiver there is a small portable transmitter that can be coupled up to a telephone over all.

It is possible to send fingerprints in this way all over the world.

Equipment is available for working over Radio Telephone Links, and the apparatus is manufactured by Muirhead & Co., Ltd., Beckenham, Kent.

The New "Gross"*

IT takes many qualities to make a detective or, as this book calls him, an investigator. Among them are intelligence, education, personality, persistence and many more. Not the least is a high degree of professional skill. In this country important steps have been taken in recent years to improve the skill of the detective officer, most of whom have attended at least one course at one of the Detective Training Schools. At these schools the emphasis is essentially on teaching criminal law and procedure, but of late a little more attention has been paid to the practical side of the job. In the main, however, the acquisition of the tricks of the trade, the practical experience so essential to a successful officer, has

**Criminal Investigation*, by Dr. Hans Gross. Fourth edition, edited by Ronald Martin Howe, M.C., Barrister-at-law, Assistant Commissioner, Criminal Investigation Department, New Scotland Yard. *Sweet and Maxwell Ltd.* Price £1 7s. 6d.

been left to time and working in association with the older and experienced hand. In truth, much of the older detective's knowledge was learnt by him from the criminals he handled.

Dr. Hans Gross, Professor of Criminology in the University of Prague, appreciated this many years ago and committed the knowledge he had acquired to paper, a record for those who followed him. As the present editor says in his preface, " This book still remains the work of the great Dr. Hans Gross, who was years ahead of his time."

The fourth edition of the work was edited by Sir Norman Kendal in 1934 and the edition now published is by Mr. Ronald Howe, both names in the world of criminal investigation with which to conjure. The fact that the book under review comes from such a pen is in itself sufficient recommendation, but there is much more in it than that. Without any hesitation we recommend it as a book which should be in every police library, in every C.I.D. and in the personal possession of every detective who is still learning his job. The information available within its covers has been compiled over many years in many countries, and has now been brought fully up to date. It contains little or no law. It is assumed the reader will be well versed in law and procedure before he embarks on criminal investigation. It is something more than a book of reference, which will be its principal purpose; it is readable and indeed some of its chapters, those with a wealth of cases quoted to illustrate the points made, are of absorbing interest.

The present edition has amounted, in the main, to a re-writing of the book. The work has not lost its identity in the process, for care has been taken to retain its form and character and much advice given by the original writer remains and is as forceful as when first written. Criminal investigation has progressed in the past few decades, particularly in the field of science. Mr. Howe has brought the book in line with the progress made; who better to perform such a task than he with the collaborators he names? All men of great police experience.

In a review of this nature it would be impossible to deal with all aspects of the work, but some chapters call for special mention. The chapter which deals with the qualities and duties of the investigator is comprehensive, a little frightening maybe, but sound. The standard set is not often reached but is one to which all police officers may aim. The warning given against pre-conceived theories should be studied by all who wish to make a success of the very specialised work of crime detection, for a full grasp of the principles laid down will help in avoiding pitfalls. The chapter on the examination of witnesses and accused will assist the student and, whilst some of the ideas may be difficult to put into practice, a careful and repeated perusal will put the interviewing officer on the right road.

A very considerable section of the work is devoted to scientific aids.

Well written, as is the whole, it sets out the possibilities in a manner easy to assimilate and provides a valuable reference. The editor appreciates the need to warn the student against attempting to take unto himself the work of the scientist and advises him when he should call in expert aid and points out the rôle of the scientist whose aid he should seek. It also deals with many semi-technical matters in a manner easily understood by the layman. The cases outlined act as most valuable illustrations of the points made.

The section on photography is essentially practical. The editor quite wisely states that it is not desirable that the investigator should become an amateur photographer. Whenever possible this work should be carried out by a specialist. Of practical value is the instruction given as to when and how the photographs should be taken. A careful study of the section will place the investigator in a position where he can instruct the expert as to what he wants done and will ensure he employs the art to the full. Similarly with fingerprints. The book is not intended to be a treatise on this subject but it is intended to convey sufficient information to enable the detective to make the full use of the science of fingerprint identification.

The section marked " Practices of Criminals " savours rather of the older edition and probably will be found not to be of such everyday value as the remainder of the book. It is clear, however, that every young detective should peruse it, for many of the dodges described are in use and if unknown to the investigator might well throw him on the wrong track. The five pages of slang expressions which follow will be of interest and use, for although they are probably more common in London than elsewhere there are many of them of general application amongst criminals.

Sufficient has been written to indicate the kind of book this is. It might be that much of the information could be obtained elsewhere, but there are few books written on the subject and probably none as comprehensive and, at the same time, practical as this. It is a book to be studied by detectives and those who hope to specialise in this branch of police work and may be considered to be a classic in its field.

ERRATUM

Page 69, line 1 : for '*unconditional*' read '*unintentional*.'

The Colonial Police

The following appointments are announced by the Colonial Office :

BEAL, G. M., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Police, Tanganyika.
BROOKES, J. E., Assistant Inspector of Police, Kenya.	Assistant Superintendent of Police, Gold Coast.
BROWN, E. J. G., Superintendent of Police, Uganda.	Senior Superintendent of Police, Uganda.
DASHWOOD, H. N. E., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Police, Tanganyika.
DEEGAN, J. W., Deputy Commissioner of Police, Uganda.	Commissioner of Police, Uganda.
DUKE, P. H., Superintendent of Police, Barbados.	Assistant Superintendent of Police, Gold Coast.
GORDON, M. I. N., Superintendent of Police, British Guiana.	Superintendent of Police, Gold Coast.
HADOW, N. P., Superintendent of Police, Gambia.	Commissioner of Police, Mauritius.
HOCKENHULL, A. J. W., Assistant Superintendent of Police, Federation of Malaya.	Deputy Director of Public Relations, Federation of Malaya.
KING, S. L., Assistant Superintendent of Police, Tanganyika.	Superintendent of Police (C.I.D.), Aden.
LIDDELOW, G. B., Superintendent of Police, Trinidad.	Assistant Commissioner of Police, Trinidad.
MOSS, E. F., Assistant Superintendent of Police, British Guiana.	Superintendent of Police, British Guiana.
RICHES, E. H., Superintendent of Police, Tanganyika.	Senior Superintendent of Police, Police Service Unit, Uganda.
SHANNON, P. J., Assistant Superintendent of Police, Singapore.	Commissioner of Constabulary, Sarawak.
SHEARS, A. G., Assistant Superintendent of Police, Federation of Malaya.	Administrative Officer, Criminal District and Police Courts, Federation of Malaya.
STOURTON, I. H. E. J., Commissioner of Police, Uganda.	Commissioner of Police, Nigeria.
WHEELER, R. DE LACEY, Superintendent of Police, Tanganyika.	Senior Superintendent of Police, Tanganyika.
WIGLEY, F. S., Superintendent of Police, Leeward Islands.	Superintendent of Police, Fiji.

ERRATUM—October List.

H. F. JONES, Assistant Inspector of Police, Kenya, is promoted to be Assistant Superintendent of Police, Kenya (*not* Gold Coast).

THE POLICE JOURNAL

VOL. XXIII, No. 3 JULY-SEPTEMBER, 1950

Quarterly Commentary

ATTENDANCE CENTRES

WE have little doubt that if the Courts saw fit to implement the provisions of the Criminal Justice Act, 1948, in the full and strict sense there would be a very real and rapid reduction in the number of crimes committed. The Act made provision for every effort to be made to reclaim the valuable material which now runs waste to crime. It also gave opportunity for the courts to recognise the failures which it is inevitable there will be and provided that these may be dealt with under a system which the Scottish Committee aptly termed "warehousing." In brief, when a criminal has indicated he proposes persistently to lead a life of crime, he should be locked up by the courts, thus protecting the public on whom he would otherwise prey.

One of the new and interesting schemes to reclaim young offenders was to order their attendance at a Centre where they would be put to useful work. We agree wholeheartedly with the idea behind the scheme for we have long been convinced that one of the factors which leads to crime is a dislike for work. If the offender who is tainted with laziness is made to do some really hard but useful work, nothing but good can result. He will thus receive the punishment which he deserves, punishment which under most of the other systems is wholly absent, he will be making a useful contribution to society and be making some retribution, and if set enough tasks will possibly rid himself of the dislike for work and form a useful habit.

One of the real difficulties of putting the new Act into operation is that the Bill became law before the buildings to accommodate the prisoners had been built. Too much "warehousing" would fill the already over-populated prisons to overflowing. Corrective training cannot properly be carried out until special places are built to accommodate the trainees. There has been little indication as to the lines attendance at a centre will take, where the centres will be, the kind of treatment to be meted out thereat, or the authority on whom will rest the responsibility for imposing attendance and conducting the centres generally. Presumably, the scheme is not to be confined to children and young persons but will be extended at least to adolescents. The treatment is to be on a part-time basis, carried out in spare time, so it will be necessary for a large number of centres to be provided to avoid the difficulties of travel or the scheme will not in practice be used. If there are in fact many such places provided there will be considerable staffing difficulties, for the numbers ordered to attend will be comparatively few. The sentence to attend such a centre will, we presume, fall in gravity considerably below a sentence of imprisonment or detention at Borstal or an approved school, so it will follow that any taint still adhering to such places will have to be avoided. Now that we have reached such a position that it is openly stated that prisons no longer exist for punishment but are wholly to reform, it might be that the most zealous reformer will agree that the risk of taint is so slight that it can be ignored and such existing buildings may well become, in addition to their present use, Attendance Centres.

The Police will be unanimous in the view that the duty of running Attendance Centres should not fall on them. It is unlikely that such a proposal would find much favour anywhere and the Deputy Chairman of the Glamorgan Quarter Sessions who is reported recently to have ordered two youths, aged 17 and 18 years, to attend on Saturday afternoons from 2 p.m. to 5 p.m. for six months at a police station there to be employed suitably, will be with a small minority in his view that a police station is a suitable place. It might be that even he did not seriously adopt this view, but wishing to use the provision of the new Act on youths for whom the treatment seemed appropriate found himself in a difficulty and used the police station as the place which most readily came to mind.

It is very important that the Police who enforce the law are wholly impartial. They should not take any active part in politics or in making the laws, they should take no part in the judicial functions of the courts, should not be unduly interested in the result of cases and, we suggest, should have no part in carrying out the sentence inflicted. We were always very doubtful about the propriety of the Police birching boys. A policeman is a policeman and it mattered not whether the one who actually applied the birch was the one who had detected the offender and had given evidence, he was one of the same breed, of the same force, from the same buildings, and the execution of the sentence was apt to take on the appearance of a personal matter. In this country there is no connection between the Police and the staffs of prisons, Borstal and approved schools. We feel this is correct and there should equally be no connection between the Police and Attendance Centres.

Youths as Special Constables

We presume that coming from the Attorney-General in an address to probation officers at their annual meeting, the suggestion that it would be a good thing to enrol youths over school age into a junior section of the Special Constabulary was a serious proposition, uttered not in the enthusiasm of the moment but as a result of previous thought and was intended to be noticed. It certainly has received notice from many quarters, not the least from those who are keenly interested in the youth movement. Others who have commented upon the idea include people who deprecate the over-use of uniform and parades. We are interested particularly in the idea of youths joining the Special Constabulary—not merely in their joining a uniformed body. As far as we can see the idea has little to commend it and some considerations are definitely against such a scheme. In the first place we presume the scheme was intended not to augment the constabulary, to improve it or to help it in any way—the meeting was one of probation officers whose work is connected with offenders—but solely for the good of the youths. Presumably the Attorney-General will agree that there is no place for criminals, young or old, in the ranks of the Police, so it follows that only youths of excellent character and personality could be considered. As it is not amongst this class of youth that the probation officer works or about whom the Attorney-General was at the moment concerned, it must follow that the proposed new section of the Special Constabulary is not intended to exercise a good influence over its own members but over the less well disposed members of the community. We doubt whether anyone would propose that such youthful Specials should be engaged on detective duties. Criminal investigation, whether it relates to crimes of adults or children, is not child's-play despite the stories we read in our youth and sometimes now hear on the wireless. The only activity left open seems to be the prevention of crime by the new uniformed boy Special. Such a proposition falls more readily within the realms of possibility; we already have it in a restricted degree in all disciplined or organised bodies, in schools, clubs, teams, etc. The elder, the well behaved, exercise a restraining influence on the more wayward members, their presence keeps them straight either from example or from a cultivated sense of maintaining the good name of the body.

In crime, however, different factors arise for consideration. Too high a value cannot be placed on the uniformed constable patrolling the beat. His presence has a steadying and sobering effect, he represents the dignity and majesty of the law. Behind him stands tradition and force and hundreds of years of law and order enforced by the courts at the will of the public. The constable is the point of the spear which can be thrust forward by the mighty force behind. These facts are accepted and rarely challenged. Here and there desperate criminals have flaunted the authority and policemen have been shot because they were policemen; but the occasions are rare. What would happen if an attempt were made to clothe youths of a little over school age with this authority? We suggest that apart from being wholly unavailing it would bring ridicule on the parent body. Experience of the Police has indicated that although the Special has performed much valuable work, and in the ranks of that organisation can be found much well-developed policemanship, to the less well disposed section of the community he breeds little of the wholesome respect and wholesome fear of his experienced professional colleague. What then of his boy colleague? Can it be seriously suggested that the work is suitable for boys, or boys for the work? The proposal is not to enlarge the existing system of cadets which is doing much good in an entirely different sphere, but to set up a new force. Finally, the task of keeping boys and girls from crime is not one easily disposed of in this way. Many of the boys concerned are tough and require handling by experienced men. It is not work on which boys can be engaged. The answer is not here; we wish it were.

Police Discipline

Among the most controversial recommendations of Part II of the Oaksey Report is the one about discipline. At paragraph 235 the Report deals with police discipline and records the view that it must be of a high order, even higher than that in the Armed Forces. Because it is so strict there is all the more reason that it should be fair and that the way it is administered should command the confidence of the men. The Report emphasises that nothing it says should be taken as advocating any reduction in the standard.

Having in mind the high standard of conduct required and realising that many of the disciplinary charges are technical in character, such as being late for parade, failing to work a beat correctly, neglecting to make some entry in a book, etc., the next paragraph, 236, indicates that a surprisingly small number of defaulters was dealt with in the years under review. For instance, in 1948 only 22 per thousand were punished and of those about 15 were dealt with by caution or reprimand. Therefore, only about 7 per thousand were dealt with on charges which, judging by the punishment, were deemed to be serious.

The Report deals at length with the difference in the disciplinary figures in the various types of forces, in particular between the boroughs and the counties. The county figures are considerably lower than the boroughs and the Committee found no definite reason for this difference. They agreed that it might be found in the fact that in populous areas the likelihood of detection is greater in that the degree of supervision is higher. It is also suggested that there are widespread and possibly significant differences of approach in different forces, small matters in one force being dealt with on the spot informally whilst in another resulting in a misconduct charge and a formal hearing and record. The Report recommends a more uniform procedure, but we believe, human

nature not readily falling into a common mould, that differences between forces, which appear to be comparable in most matters, will continue whatever system is laid down. The difference is not confined to police discipline but can be found in the ratio of cautions to prosecutions of offenders against the general laws, *e.g.* motoring regulations.

The Report goes on to recommend a most elaborate and, we suggest, unnecessarily cumbersome system which is calculated to level things up as between forces. One suggestion is that the Deputy Chief Constable and not the Chief shall decide whether a formal charge shall be made. Some may think that this will merely have the effect of increasing the overall number of formal charges.

The recommendation which has raised the most controversy and which will be fought with vigour is that the powers of the Chief Constable of a Borough Force should be brought in line with those of a County Force. The Police Committee of the Association of Municipal Corporations has publicly stated its objection which seems to be based on the grounds that there has already been too much whittling down by the Central Government of the powers of local authorities, bodies elected by public vote to exercise control over local matters. It seems possible that but for the principle which is involved, there would have been little objection from this body. The Police Federation has announced its objection to the proposal which rests, generally speaking, on the grounds that it would rather that defaulters were tried by a jury, that is the Watch Committee, than by a judge, in the person of the Chief Constable.

The Oaksey Committee endorses the view taken by the Desborough Committee, and states its reasons quite clearly in paragraphs 185-187. The Committee considered that a Chief Constable should now be vested in law with the full executive powers of a commanding officer and himself exercise these powers over the force he commands. It considered discipline is almost always safer in the hands of an expert individual than in those of a lay committee. No commanding officer can exercise proper authority in matters of internal administration if he has continually to share that authority with a committee, particularly an elected body subject, inevitably, to local pressure and prejudices. It is important also to note that the Chief Constable and other members of the force are not servants of the police authority in the ordinary sense of the term; they are ministerial officers of the central power though subject in some respects to local supervision and local regulations.

It would seem that there can be no valid argument for such a difference in practice as now exists between County and Borough Forces. It may be that neither is correct and that somewhere between the two can the ideal be found. The Oaksey Report suggests this can be brought about by bringing the boroughs into line with the counties and by extending the right of appeal to the Secretary of State in all cases where there has been a finding of guilt, whatever the punishment, and that the appeal may be against either this finding or the punishment or both.

If the recommendation is accepted, the practical effect will be small indeed. Most Watch Committees merely act as a confirming authority and the number of cases where they revoke or alter a Chief Constable's award is small. Incidentally we wonder how the idea grew up that a Borough Chief Constable had not the power to dismiss a constable or call on him to resign. We have frequently heard it expressed, but the regulation is quite clear. His decision, subject to any general direction of the Watch Committee, shall be to, (*a*) dismiss the case, or (*b*) to remit it to the Watch Committee, or (*c*) impose one of the punishments prescribed by the Regulations. These punishments include those mentioned above. All such punishments awarded except a caution are subject to confirmation by the Watch Committee. It is extremely unlikely that any change which is made as a result of the Report will take the form of bringing the Counties into line with the Boroughs; indeed, we understand the Standing Joint Committees do not want such a change; they are content to continue the present practice, it having existed for many years and therefore not constituting a new whittling down of their powers.

The Police and the Law

Arrest of 'Suspected Person' When Previous Convictions Not Known to the Police

IN the January issue of this Journal the recent case of *R.* v. *Fairbairn* (now reported at 1949 2 *K.B.* 690) was noted in its relation to the law of arrest without warrant of persons found offending against section 4 of the Vagrancy Act 1824. The principle of that decision has now been carried a stage further, or at any rate shown to have a wide application, by the new and important ruling of the Court of Criminal Appeal in *R.* v. *Clarke* (1950, 1 *All E.R.* 546). We now have the authority of that Court for saying that a person who is proved to have frequented or loitered about a place within the meaning of the Vagrancy Act, with intent to commit a felony, and proved at the subsequent trial to have had previous convictions, can be properly described as a 'suspected person' within the meaning of the Act even though the police officers, who give evidence of his frequenting or loitering with that intent and who arrested him without warrant, were unaware at the time of the arrest of the existence of the previous convictions.

The appellant in this case was convicted at Middlesex Quarter Sessions on an indictment charging him under section 23 (2) of the Firearms Act 1937 with the composite offence of having unlawful possession of an imitation firearm at the time of committing another offence of the class referred to in the Act, in this case the offence of loitering or frequenting with intent to commit a felony under section 4 of the Vagrancy Act 1824. The actual facts behind the charge are familiar enough in this class of case and were as follows. The appellant was kept under observation by two police officers for some twenty minutes at about 2 a.m. on November 6, 1949, in different parts of the Great West Road, London. He was seen to be loitering in and about various streets in circumstances which satisfied the jury at the trial that he was loitering with intent to commit a felony. He was arrested and the imitation firearm was found in his possession. In order to establish that he was a 'suspected person' at the time of arrest, evidence was given that he had had previous convictions of larceny and shopbreaking at Leicester in 1942 and 1948. These convictions were unknown to the police officers who watched him in London in 1949. It was argued on behalf of the appellant that he could not have offended against the Vagrancy Act unless these previous convictions, which were the only evidence submitted to the jury that he was a 'suspected person' at all, were known at the time of the arrest by the persons effecting the arrest. It is to be observed that in *R.* v. *Fairbairn* the evidence of the police officers who made the arrest in that case was that they knew that the two men they arrested had had previous convictions. This was not the position in *R.* v. *Clarke*.

This distinction between the two cases was held to be immaterial and the appeal was dismissed. Mr. Justice Humphreys, speaking for the Court, said : " No case would seem to have been reported which has raised this point, but, in our opinion, there is nothing in the Act or in any of the authorities to which our attention has been drawn to suggest that the previous convictions must be known to the arresting officers in order to prove that as the result of those convictions the person convicted became a suspected person. Any such decision would, in our view, tend to make the provisions of section 4 useless since a thief might change his venue and the places where he chose to loiter with sufficient frequency to make it unlikely that the local police officers would recognise him or know anything about him." And in conclusion he said : " No case was brought to our attention in which any judge has expressed any view as to knowledge on the part of police officers of the past character of the accused person being required. In our opinion, the two cases cited (*Ledwith* v. *Roberts* and *R.* v. *Fairbairn*) show that such knowledge on the part of the police is irrelevant, and, certainly, is not essential."

Recent Judicial Decisions

The Importance of Intention on a Charge of Receiving Stolen Goods

R. v. *Matthews*

THE care with which not only the prosecution but also the judge must approach the question of the accused's *intention on a charge* of receiving stolen goods is forcibly illustrated by the decision in *R.* v. *Matthews* (66 *T.L.R.* 153). There was no doubt on the facts that the appellant received some property which he knew to be stolen. His defence was that when he received it from the thief he knew that he was the thief but that his (the appellant's) intention was, when he received it, to hand it over to the Police. It was not, of course, necessary to consider his motive, which might or might not have been to give away the man who had stolen the property. The appellant's story was that he received the property with the innocent and praiseworthy intention of handing it over to the Police. The Police at that time were anxious to see him with regard to some motor-cars which had been obtained by false pretences. He in fact sent a telephone message to them making an appointment. When they came according to the appointment, he did not give up the property to them. He was taken off in custody in a Police car to a police station and somehow or other, while he was in the car, he managed to get the stolen property out of his pocket and slip it down behind the seat of the car where it was not found till the next day.

This being the evidence and the defence, the chairman of quarter sessions directed the jury as follows : " You have got to consider this. You may think that when he telephoned to the Police he may have been intending to hand over the stolen property. Assume that he did, if he changed that intention, then we are in this position : he received property which was stolen, which he knew to be stolen, and, having no guilty intent originally, nevertheless he changed his mind and kept it. My instructions to you are that in these circumstances that is no defence to these charges, because the guilty intent is present when he did not hand it over to the Police." The Court of Criminal Appeal held that this was complete misdirection on the law of receiving and the conviction on this charge was quashed.

After pointing out that the chairman might well have asked whether in all the circumstances he could possibly have had guilty intention if the intention was at once to hand the goods over to the Police, the Court said that if the appellant received the property in the way in which he desired the jury to find, then that would not be a felonious receipt of the property. The Court could not possibly accept the argument on behalf of the prosecution that a person intending at once to hand over

to the Police, or the true owner, property which has been stolen is nevertheless guilty of the felony of receiving stolen property. That would mean that a person who chased a thief and picked up the stolen property when it had been dropped by the thief would be guilty of the offence of receiving stolen property. Lord Goddard, C.J., said : " If a receipt is innocent and not felonious—if at the time when the property is received the receipt is innocent—the fact that the receiver changes his mind and misappropriates the property does not turn the receipt into a felony. That has been the law of this country for very many years."

The cause of the misdirection in *R.* v. *Matthews* seems to have been a misapprehension of the effect of the decision in *Ruse* v. *Read* (1949 1 *K.B.* 377). This case is commented on in the previous volume of this JOURNAL (vol. 22 [1949], page 90). If the original taking of goods is wrongful, as being a trespass, though not felonious, then, if the taker subsequently alters his mind and misappropriates the goods, it does amount to the felony of larceny. But it was never said in *Ruse* v. *Read* and the earlier cases which it followed that the taker had become guilty of receiving.

Proof of Existence of Commercial Petrol : *Prima Facie* Evidence

Taylor v. *Ciecierski*

The decision of the High Court in this case (1950, 1 *All E.R.* 319) disposed of the undue alarm which has been felt in England about the supposed difficulties in establishing legal proof of the existence of commercial petrol.

An information was preferred by a police officer charging the respondent, the owner of a private car, with having had present in the tank of his car a quantity of commercial petrol contrary to the Motor Spirit (Regulation) Act, 1948, section 2 (1). For the respondent it was contended that the presence of the prescribed ingredient of commercial petrol, diphenylamine, in the petrol taken from the tank of the car had not been proved beyond any doubt. The justices dismissed the information and the prosecutor appealed by way of case stated to the High Court. The importance attached to the case is indicated by the fact that the Solicitor-General appeared for the prosecutor on the appeal.

The facts given in evidence before the justices were that a police officer stopped the car and tested the petrol in the tank with a reagent paper. Having tested it twice, it appeared to him that the tank contained commercial petrol and he did what the Act prescribes, namely, took a sample, divided it into three parts, and sent one part to the public analyst. The analyst certified that the sample " yields a positive reaction for diphenylamine, the prescribed ingredient of commercial petrol as defined in the Motor Spirit Regulations, 1948, art. 3. I am, therefore, of the opinion that this sample consists of, or contains, commercial petrol." He repeated this in evidence. Obviously, said the High Court, that was *prima facie* evidence that the offence had been committed. In cross-examination, however, he added this further information : " that theoretically the same result could be used by derivatives of diphenylamine, being substances of the same group and of very similar composition to diphenylamine ; that there would be no purpose in putting such substances into petrol ; that while it was not unlawful for such substances to be supplied to the public, they were uncommon and not easily obtained."

Taking into account all the statements made by the analyst the Court thought that there was *prima facie* evidence which called for an answer. If it was not in fact commercial petrol, the respondent had the opportunity of proving it was not. The burden of proof that it was not commercial petrol was on him after the evidence of the analyst. The case was, therefore, sent back to the justices with the opinion of the Court that there was a *prima facie* case calling for an answer by the defendant.

Destruction of Gaming Instruments : Gaming Act, 1845, and Betting Act, 1853

Coughtrey v. *Porter*

On a charge under the Betting Act, 1853, Section 1, the justices have power to have gaming instruments brought before them, but for some reason, probably an oversight when Parliament was passing this Act, it was not provided that those articles might be destroyed. But there is power to order the destruction of gaming instruments under Section 8 of the Gaming Act, 1845. It was decided in *Eyre* v. *Brumfield* (1936, 100 *J.P.* 209) that this is the only section which enables justices to make an order for destruction. The relation between the provisions of these two Acts is somewhat complicated, as is shown by what occurred in *Coughtrey* v. *Porter* (1950, 1 *All E.R.* 257).

On June 21st, 1949, a complaint was made by the respondent, a superintendent of police, that the appellant was the occupier and keeper of an amusement arcade where there were in use automatic gaming machines. The justices duly issued a special warrant under Section 3 of the Gaming Act, 1845, and on June 25th police officers entered the premises and seized the machines. The appellant was not on the premises at the time, but later he visited the police station where an officer purported to arrest him under the warrant and then to grant him bail under Section 21 of the Criminal Justice Administration Act, 1914. On June 27th an information was laid against the appellant under Section 1 of the Betting Act, 1853, charging him with using the premises in connection with gaming. At the hearing he pleaded Guilty to the charge under this Act, but he refused to plead to a charge that he had used the amusement arcade as a common gaming house contrary to the Act of 1845, on the grounds (*a*) that the warrant had not been properly executed, and that he was not before the court by virtue thereof, and (*b*) that there was no information or summons in respect of any offence under the Gaming Act, 1845. The justices, having dealt with the plea of guilty under the Act of 1853, found that the appellant having been arrested under the warrant under Section 3 of the Gaming Act, 1845, and released on entering into a recognisance in accordance with the procedure of the Criminal Justice Administration Act, 1914, had lawfully been brought before the court under the warrant and ordered the destruction of the nine gaming machines which were in question. The High Court allowed the appeal in respect of the order for destruction, holding that the justices had no power to issue such an order.

In giving judgment on the appeal the Lord Chief Justice began by saying that there were no merits in the appellant's case, but that that did not matter because an order cannot be made for the destruction of a person's property, even if it is gaming property used for the purpose of playing unlawful games, unless the statute justifies it. The appellant argued that he could not be lawfully arrested at the police station under the warrant issued under Section 3 of the Gaming Act, 1845, and that, therefore, he was not before the justices by " virtue of that warrant." Under that section there is power for justices in any case in which they themselves might enter premises where unlawful games are suspected to be played to issue a warrant allowing constables and others to enter and search and to bring before a justice " all such persons found therein as might have been arrested therein by such justice of the peace had he been personally present." To find out what persons the justice himself might have arrested, it is necessary to go back to the Unlawful Games Act, 1541, an Act of Henry VIII which is still on the statute book. That Act, by Section 9, enables justices, mayors, sheriffs, and so on, to enter premises " and as well the keepers of the same as also the persons there haunting, resorting and playing to take arrest and imprison, and them so taken and arrested to keep in prison, unto such time as the keepers and maintainers of the said plays and games have found sureties to the King's use."

It seemed clear to the Court that under the Act of 1541, before the justices can arrest they have to find the people on the premises, and that Section 3 of the Act of 1845 must also only be dealing with the persons the constables find on the premises when they execute their warrant. On the facts of the case, they did not find the appellant on the premises when they executed the warrant. They arrested him afterwards. Once the appellant was released by the police officer, he was not only released on bail but he was actually released, because the police officer had no power to bail him, he not being the person named in the warrant : under the Act of 1914 the justice can only direct by endorsement that the person named in the warrant be bailed and the police officer has only power to bail the person named in the warrant, and as nobody was named in the warrant, it followed that the Act of 1914 did not apply. When the appellant was before the justices he was not before them by virtue of the warrant but by virtue of the summons which had been issued under the Betting Act, 1853. In the opinion of the Court, he had not been arrested under the warrant issued under the Act of 1845, and, secondly, by his being released, the effect of the warrant had expired. It followed that there was no power to order the destruction of the articles of gaming. Although the appellant was properly convicted and fined under the Betting Act, 1853, the order for the destruction of those articles was ordered by the High Court to be quashed.

Aiding and Abetting : Knowledge of Illegality Not Necessary

Johnson v. *Youden*

It is to be hoped that a point of general importance in the criminal law which emerges from the decision in *Johnson* v. *Youden* (1950, 1 *All E.R.* 300) will not escape attention on account of the very specialised particular offence which was charged in that case. The observations made by the High Court on the law relating to aiding and abetting in this appeal from a court of summary jurisdiction dismissing informations preferred under the Building Materials and Housing Act, 1945, are of general application. The vendor of a house was duly convicted of an offence under that Act by receiving £250 from the purchaser in excess of the authorised statutory price and the three members of the firm of solicitors who acted for the vendor in the sale were charged under that Act and Section 5 of the Summary Jurisdiction Act, 1848, with aiding and abetting the commission of the offence. Informations against two of the solicitors were held to be rightly dismissed as they did not know about the extra £250, as their client deliberately concealed the fact from them. The Court said that they could not be guilty of aiding and abetting the commission of the offence as they did not know of the matter which constituted the offence. If they had known that their client was receiving the improper sum and had continued to see the sale through, they would have committed an offence and, in the words of the High Court, " as ignorance of the law is no defence, they would have been guilty of the offence even if they had not realised that they were committing an offence ; but a person cannot be convicted of aiding and abetting the commission of an offence if he does not know of the

essential matters which would constitute the offence." The position of the third solicitor was different. He had knowledge of facts which amounted to an offence by the vendor yet went on with the sale. The High Court held that an offence had been committed in his case.

Schizophrenia as a Defence on Murder Charge

R. v. *Rivett*

The importance of the case of *R.* v. *Rivett*, said the Court of Criminal Appeal on February 27th, 1950, was that it gave the Court the opportunity to emphasise, if emphasis were necessary, two matters of cardinal importance in the criminal law. The first was that in considering whether a person was to be excused from the consequences of his crime, be it murder or any other, the question was not merely whether he was suffering from a defect of reason due to disease of the mind, but whether that defect was such as to render him not responsible for his action. That was one of the most important points discussed in *M'Naghten's Case* (1843, 4 *St. Tr.* 847). The evidence relied on for the defence in *R.* v. *Rivett* was that the prisoner was suffering from schizophrenia, which, said Lord Goddard, C.J., was apparently a modern and perhaps more imposing name for what used to be called *dementia praecox*. That expression translated into English meant defect of mind existing from an early age.

The second matter of emphasis was that it was for the jury and not for medical men of whatever eminence to determine the issue. Unless and until Parliament ordained that the question was to be determined by a panel of medical men, it was to a jury, after a proper direction by a judge, that by the law of this country the decision was to be entrusted. The defence had produced the opinion of medical men of undoubted integrity and whose qualifications none would question that the prisoner was insane and suffering from schizophrenia. But two juries who had been sworn to try the preliminary issue whether he was fit to plead had found that he was so fit, and the trial jury had brought in a verdict of guilty after a summing-up by the trial judge which the defence admitted was impeccable. The Court, in addition to the opinion of the medical men, had the facts and the undisputed facts of all the circumstances surrounding the killing of a schoolgirl by the prisoner. The present case, declared the Lord Chief Justice, was not one where a scientific witness could say with certainty, as in the case of a bodily disease, from specific symptoms such as a rash, a coma or other physical sign, that a disease existed. The jury had heard the indications which had led the medical witnesses to their conclusion : they had also heard all the other facts relating to the man and the crime, including the evidence of the doctor who saw the man very soon after it was committed. That he knew he had done wrong was evidenced by the fact that he not only told his friend what he had done and indicated the consequences which would follow to himself, but gave himself up to the Police for having committed murder. The judgment thus concludes : " Let it be assumed he suffered from schizophrenia, or whatever doctors might call it; let it be assumed that he killed the girl on a sudden impulse; a jury of this country were satisfied that he was responsible, and it is not for the Court of Criminal Appeal to say that he was not."

The appeal against conviction was dismissed and, the Secretary of State seeing no grounds for interfering with the due course of the law, the death sentence was carried out.

Dying Declaration as to Cause of Death
Waugh v. *Rex*

Among the exceptions to the rule that hearsay evidence is inadmissible is what is usually known as a dying declaration. A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible in evidence at the trial of another person for the murder or manslaughter of the declarant. This exception was one of the factors which fell to be considered by the Judicial Committee of the Privy Council in *Waugh* v. *Rex* (66 *T.L.R.* 554), an appeal against a conviction of murder in Jamaica.

The appellant was a ranger on an estate in Jamaica. He met the deceased trespassing and shot him with a shotgun, the real issue at the trial being whether the killing was in self-defence or murder. There was evidence that the deceased was in possession of weapons, or implements which could be used as weapons, at the time. He was not unconscious when he was found, but he became seriously ill the same night after he had been taken to hospital. Then, at his own request, he made a statement in the presence of the doctor and it was taken down by the police. He did not finish this statement; he broke off in the middle of a sentence and fell into a coma from which he never recovered. At the trial this incomplete declaration, which purported to deal with the trespassing and shooting incident, was admitted in evidence. Lord Oaksey, in giving the opinion of the Judicial Committee, said that this particular dying declaration should not have been admitted in evidence because on its face it was incomplete and no one could tell what the deceased was about to add. His Lordship also said that it was in any event a serious error not to point out to the jury that the declaration could not be open to cross-examination. One basic reason why the law in general rejects hearsay evidence is that it cannot be tested by cross-examination of the person making the statement. When a dying declaration is admitted in evidence as an exception to that general rule the jury ought to be

warned that the truth of the statement cannot be put to the test in this way. The Judicial Committee in fact thought that the contents of the declaration were not convincing as they included what looked very like a false explanation of how the deceased came to be trespassing.

In addition to the admission of the uncompleted dying declaration it was held on the appeal that there were certain parts of the summing-up which constituted a grave departure from the rules which justice requires. Among other criticisms was that the trial judge made repeated comments on the appellant's failure to give evidence at the trial; those comments may well have led the jury to think that no innocent man could have decided not to give evidence. In the result the appeal from the Supreme Court of Jamaica was allowed.

Brothel-Keeping : Statutory Summary Offence and Indictable Common Law Offence
Waroquiers v. *Marsden*

The High Court in this case (66 *T.L.R.* 117) stressed the right of the prosecutor to proceed against an accused person upon any charge which in law correctly fits the facts. The decision was concerned with the fact that the offence of brothel-keeping is both an indictable common law offence and a statutory summary offence under the Criminal Law Amendment Act, 1885, as the Court held. Section 13 (1) of that Act provides that a person convicted of a number of things, including the keeping or managing or assisting in the management of a brothel shall, on summary conviction in manner provided by the Summary Jurisdiction Act, be liable to a penalty, which includes imprisonment for a term not exceeding three months. The defendant, who was brought before a court of summary jurisdiction on this charge, purported to elect to be tried by jury. The rule under the Summary Jurisdiction Act, 1879, is, of course, that there is only a right of election to be tried by jury if the offence is punishable with more than three months imprisonment. But the defendant contended that assisting in the management of a brothel is a common law offence only and that Section 13 (1) of the Criminal Law Amendment Act, 1885, created no new statutory offence, but was merely declaratory of the common law so far as the offence was concerned and only made the offence also triable summarily and that therefore he had a right to elect to be tried by a jury. This contention was rejected. It was held that the Act of 1885 does more than deal with the method of trial; it makes the offence a summary offence by statute and thus supplements the common law. There was no right to a trial on indictment.

At the same time it was said by the Court that if a magistrate in any such case comes to the conclusion that there are special circumstances which would make it in the interests of justice that the defendant should be sent to take his trial before a jury, when he would be liable to a much heavier punishment, he has the right to commit the defendant for trial whether he likes it or not. But unless the magistrate chooses to act in that way or the prosecutor chooses to enter on the charge sheet a charge of keeping or managing or assisting in the management of a brothel contrary to the common law, there is no right of election.

Borrowing Money Held to be an Obtaining of Credit

R. v. *Pryce*

The decision in *R.* v. *Pryce* (34 *Cr. App. R.* 21) clarifies the scope of the offence of obtaining credit by fraud contrary to the Debtors Act, 1869, as well as of the offence under the Bankruptcy Act, 1914, with which the decision is immediately concerned. The appellant had frequently engaged in the well-known fraud which is generally known as the directory fraud, that is, pretending that he was compiling street directories and getting money out of people with promises of employment and so forth when in fact he had no business at all. In this way he had obtained substantial sums from several people by way of loan. The charges were the obtaining of credit without disclosing that he was an undischarged bankrupt. In his defence it was submitted that his activities did not amount to the obtaining of "credit" within Section 155 (*a*) of the Bankruptcy Act, 1914, as cash was obtained and not credit. This defence was rejected both at the trial and on the appeal.

The answer to the appellant's specious argument is given in the following words of the judgment of the Court of Criminal Appeal: "If a man contracts a loan, of course he is getting credit. He gets a loan on a promise to repay, on which he can be sued, and he is getting credit. There is no difference between getting money and getting goods from that point of view. It is perfectly clear that if a man contracts a loan either by fraud or without disclosing that he is an undischarged bankrupt, he is obtaining credit. If he is charged under the Debtors Act, 1869, with obtaining credit by fraud he is liable to be convicted of that. If he is charged under the Bankruptcy Act, 1914, with obtaining credit without disclosing that he is an undischarged bankrupt, he can be convicted of that."

Erroneous Committal to Quarter Sessions for Sentence: Defendant not Released

R. v. *South Greenhoe Justices, Ex p. Director of Public Prosecutions*

In this case, which raised an important point of procedure under the Criminal Justice Act, 1948, the defendant appeared before a court of summary jurisdiction on summonses alleging seven offences under the Bankruptcy Act, 1914, that is, obtaining credit without disclosing

that he was an undischarged bankrupt. He elected to be dealt with summarily. The justices convicted him on six of the seven charges, whereupon he asked for seven other offences to be taken into consideration. The case was clearly an inappropriate one to be dealt with summarily. When the justices heard of the seven other offences they realised that the case was more serious than they had appreciated, and they announced that they would commit the defendant for sentence to quarter sessions under Section 29 of the Criminal Justice Act, 1948. They thereupon admitted him to bail to appear before quarter sessions for sentence in due course. The course was wrong because under that section this procedure is only available in the case of indictable offences tried summarily under Section 24 of Schedule 2 of the Criminal Justice Act, 1925, or under Section 28 (2) of the Act of 1948. The offences in question did not come under either of those provisions. The offences were incapable of being the subject of a committal to quarter sessions for sentence. The prosecution at quarter sessions then argued that as the original committal by the justices to that court was a nullity, the position reverted to what it had been before the order was made. Summonses were then issued for the same offences so that sentence could proceed to be given. The justices, however, refused to proceed with the matter as they thought they might have lost their power to sentence. An order of mandamus was then applied for directing them to impose a sentence.

The matter was considered by a Divisional Court of five judges. The defendant was represented and it was urged on his behalf that the justices had given a judgment in the case and therefore the matter was finally concluded and nothing more could be done. The Court did not agree with this. It was held that there had been no judgment and the case was, in fact, not disposed of. Until judgment had been given the hearing was not concluded. What the justices had done was to send the case forward to quarter sessions for them to pass judgment in lieu of a judgment which the committing justices might have passed themselves. The case was really in the position in which it would have been if the justices, instead of committing the defendant to quarter sessions, had convicted him, but had not then given judgment, but had adjourned the case. The justices must therefore finish the case and notice must be given to the defendant of the time when they would do this. The Court ordered the justices, by way of mandamus, to impose sentence on the defendant.

Betting Offence By Football Pools Collector

Zeidman v. *Owen*

This case (1950, 1 *All E.R.* 290) raised a question of some importance with regard to the construction of Section 3 of the Betting and Lotteries Act, 1934. The appellant had been appointed a collector by the promoters of certain football pools. People took to him the coupons which they had filled in and the stakes which they were "investing" in the pools. As they physically resorted to the house where the appellant lived, paid the money to him there, and did not conduct the business by post, the prosecution contended that he committed an offence against Section 3 (2) of the Act which provides that save as permitted by the Act " no person shall use any premises whether situate on a track or not, or cause or knowingly permit any such premises to be used, as a place where persons resorting thereto may effect pari mutuel or pool betting transactions."

It had been held in 1940 on similar facts (*Stovell* v. *Jameson* 1940 1 *K.B.* 92) that an offence had been committed but doubt had later been cast on the correctness of this decision. The High Court in *Zeidman* v. *Owen* held that any such doubts were not well-founded and upheld the conviction. The Court thought that "pari mutuel or pool betting transactions " did not refer to one and the same thing; they were different, and the question was whether football pools were pool betting transactions within the meaning of the section. When the Act of 1934 was passed football pools had become well established. They were the only form of pool betting transaction then known, except in so far as the totalisator was being used on racecourses, and there are, of course, separate provisions in the Act dealing with that. It seemed clear that in 1934, Parliament, in using the expression " pool betting transactions," had in mind this form of transaction which at that time was just becoming widespread. It is true that it has been held in other cases that football pools were prize competitions within the meaning of Section 26 (1) of the Act, but it did not seem to the Court that because they were prize competitions they might not also be betting transactions.

Procedure on Taking the Unsworn Evidence of a Child

R. v. *Reynolds*

Under Section 38 (1) of the Children and Young Persons Act, 1933, where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. In *R.* v. *Reynolds* (1950, 1 *All E.R.* 335) the appellant was convicted of indecent assault on a child of eleven years of age who was attending a school for mentally retarded children. The trial judge had to consider the application of the provision of section 38 and the further question was raised whether or not the investigation of the matter should be conducted in the presence of the jury.

It was decided by the trial judge that the jury should retire, which they did. Thereupon the school attendance officer, who was familiar with the school which the child attended, was called as a witness. He gave evidence and was cross-examined at some length. After conviction the accused appealed on the ground that the investigation should have been conducted in the presence of the jury. The Court of Criminal Appeal quashed the conviction on this ground. No member of that Court had ever known of a case in which a witness had been called to inform the court whether or not a child is fit to give evidence, though the Court did not rule that there might not be cases in which the trial judge might want some assistance of this sort. There had been a fatal mistake in that although the duty of deciding whether the child may be sworn lies on the judge and is not a matter for the jury, it is most important that the jury should hear the answers which the child gives and see her demeanour when she is questioned by the court; that enables them to come to a conclusion as to what weight they should attach to her evidence. This reason, it was declared, applies even more when some witness is called to assist the court by relating his experience of the child and the impression he may have formed of her. The jury would then have all the facts before them with regard to the child's truthfulness or reputation for truthfulness and all the information showing whether the child was a witness on whose evidence they could rely.

Sentences of Corrective Training

In delivering the judgment of the Court of Criminal Appeal on May 3rd dismissing an appeal against a sentence of corrective training the Lord Chief Justice explained certain difficulties which the judges had felt in passing this sentence at the present time. At the time when leave to appeal against the sentence was given the judges had been unable to obtain any very clear information about what was happening to prisoners who were sentenced to corrective training. Corrective training was a new form of punishment introduced by the Criminal Justice Act, 1948, and the sections which dealt with it came into force in 1949. Lord Goddard said that the judges had been somewhat disturbed because they had found out that, at the time when those sentences could first be given, accommodation had not been provided in different prisons for corrective training, and accordingly it seemed to the Court that a sentence of corrective training was in no way different from a sentence of imprisonment.

But the judges had recently had the advantage of meeting the Prison Commissioners, who had attended a meeting at which all the judges in London were present, and Lord Goddard was making the present statement so that quarter sessions might have the advantage of knowing what the judges now knew, namely, that arrangements had been made, and were in fact in force, by which corrective training could be, and was being, given in different conditions from those which prevailed under ordinary sentences of imprisonment. He did not mean to say, and it would be very undesirable if quarter sessions were to think, that corrective training should be looked on as a sentence which was not in one sense a sentence of imprisonment, because it was: it was served in prisons and, in the ordinary way, the usual one-third remission would be given unless the prisoner grossly mis-conducted himself. It had the advantage that when he came out the prisoner would be under the charge of the After-care Association, whose duty it would be to see if they could find him work and give him a helping hand and keep him under observation generally. Prisons and parts of prisons had been set aside for corrective training and the Court was, therefore, now satisfied that the discipline and effect of a sentence of corrective training were different from the discipline and effect of a sentence of simple imprisonment.

When the present case was before the single judge to whom it was first referred it was dealt with by him before the judges had had the advantage of hearing the details of the arrangements from the Prison Commissioners; he might well have thought, as all the judges did in fact think, that the arrangements for corrective training were in what might be called such a nebulous or rudimentary condition that there was really no difference between corrective training and imprisonment. They were now satisfied that there was a difference, and they thought that the case before them was exactly the kind of case which Parliament meant should be dealt with by that particular form of punishment which they had provided. The appeal against sentence was accordingly dismissed.

Confession to Two Offences Admissible on Charge Relating to One of Them

R. v. *Evans*

The appellant in *R.* v. *Evans* (66 *T.L.R.* 629) was charged in two separate indictments with the murder of his wife and infant child, and the prosecution elected to proceed with the latter charge first. After his arrest the appellant made three inconsistent statements with regard to what had happened, and in the last of such statements he confessed that he had strangled his wife on a certain date and his child two days later. In the witness-box he went back on this confession and said that it was not true. At the trial on the charge of murdering the child the judge admitted the last statement in evidence. The appellant was convicted and appealed substantially on the ground that the confession was wrongly admitted in evidence. It was argued on his behalf that only that part of the statement which related to the wife could be admitted, and that the whole confession would be admissible if previous murders had been committed and it was desired to show a system of murders. This was not the desire of the prosecution as the case did not suggest a "system" of offences as in, for example, the "Brides in the bath" case. Nor, on the other hand, argued the appellant, was there evidence that the two murders were committed at one and the same time.

In the opinion of the Court the real test to be applied was: was the evidence relevant, that is to say, did the statements which the appellant made with regard to the death of his wife bear on the question whether he was guilty or not guilty of the death of the child? It was impossible to say, in the opinion of the Court, that the evidence was not relevant; indeed, it was highly relevant in such a case as the present where two bodies, the body of a mother and child, were found together in a house in which the appellant had been living. It was most material that the evidence should be given of what the prisoner had said for the purpose of accounting for the bodies being found. If the bodies of a mother and infant child are found lying together murdered in a place, surely the evidence with regard to the death of the mother must be relevant to the question of the death of the daughter, and to the question of who caused those deaths. This is the way in which the Court looked at it. It was not a question of system, it was a question of relevance. The trial judge was right in admitting the evidence because it was relevant, and not on any such ground as that it would be very inconvenient to disentangle the sentences which referred to the daughter and not to the mother. It was one and the same story which he told. The appeal was dismissed.

Criminal Law and Practice in Scotland

Evidence Improperly Obtained

McGovern v. *H.M. Advocate*

THE practical implications of this decision are of such significance to police officers in Scotland that we think it right to make available to our readers the full opinion of the Court, delivered by the Lord Justice-General and concurred in by Lord Carmont and Lord Russell. The case of *Lawrie*, referred to in the course of the opinion, was reported in the January issue of this Journal (Vol. XXIII, p. 24).

"The applicant was convicted and sentenced to eighteen months' imprisonment on an indictment which charged him that on a date in August 1949 he broke into the office at Westrigg Colliery, Westcraigs, Harthill, occupied by the National Coal Board, and did by means of explosives force open a lockfast safe. The charge was that he stole a sum of money from that safe, but the jury confined their verdict to one of forcing the safe with intent to steal. The evidence on which that conviction was obtained consisted of a long chain of circumstantial evidence of which an important, and perhaps essential, link, was certain evidence to the effect that there was found beneath the finger-nails of the applicant nitro-glycerine and ammonium nitrate, indicating that his fingers had been in recent contact with a 'non-permitted' explosive such as had been used for blowing the safe.

"The single question argued to us in this Appeal was whether the evidence as regards the contents of the finger-nails was competently admitted, and if not, whether the conviction can stand. The circumstances under which the contents of the finger-nails were obtained were distinctly unusual. A bicycle had been found near the scene of the crime. The Police had reason to believe that the bicycle belonged to the applicant, and he was so informed and requested to attend at Harthill police station to identify it. He there stated that his bicycle had been stolen. That was on a Friday afternoon, and he agreed to go to Harthill by the nine o'clock bus on the Saturday morning. He did so and identified the bicycle. Apparently as a result of his demeanour at this interview, he came under suspicion of being implicated in the crime and was cautioned. Moreover, a search warrant was obtained to search his house and this search warrant was immediately executed with the result that certain clothing was found in a condition creating suspicion, but no more than suspicion. It was not until about 3 o'clock in the afternoon that the result of the search was known to the Police, and then, to quote words which recur more than once in the evidence, 'as a further precaution' they obtained the contents of his finger-nails by scraping them with a view to subsequent chemical analysis. So far, the evidence discloses nothing to indicate that the applicant had ever been charged, much less apprehended. Exactly on what footing he remained in the police station from 9 a.m. till 3 p.m. (if he did remain continuously in the police station) we do not know—possibly because he did not care to assert his right to attempt to go away. But it was only after all the events which I have narrated that the officer in charge 'then deemed it advisable' to charge the applicant with the house-breaking and safe-blowing, and at 3 o'clock on the Saturday afternoon he was cautioned and charged and presumably apprehended.

"As was pointed out by Lord Morison in the case of *Adair* v. *McGarry*—the case that dealt with the taking of finger-prints from a person already apprehended—it is clear that no police officer has any right to search any person whom he does not apprehend and for present purposes I find it difficult to draw any distinction between the taking of finger-prints and the taking of scrapings from finger-nails. Technically the taking of those scrapings without the consent of the applicant was an assault. Some point was made to the effect that it is nowhere stated in evidence that force was used against the applicant, or that his consent was expressly withheld; but my reading of the evidence is that his consent was never asked—at least in such circumstances as to satisfy the requirements of the law—because no consent would avail in the situation here presented unless it was given after a fair intimation that the consent could be withheld.

"It follows that the evidence derivable from the analysis of the contents of the finger-nails was improperly obtained, and I think it right to say that no attempt whatever was made by the Crown to maintain the contrary. The only matter to which the Crown's argument was directed was whether, assuming the irregularity and incompetence of the method by which this piece of evidence was obtained, the conviction must nevertheless stand upon the principle dealt with the other day by a full bench of this Court, when it was held that an irregularity in the manner of obtaining evidence is not *necessarily* fatal to its admission.

"As I said at the outset, this conviction was obtained on a chain of circumstantial evidence. It seems to me obvious that the evidence as to the contents of the finger-nails must have been most material as a link in that chain, and that its admission must to a substantial extent have prejudiced the appellant in the minds of the jury. Where evidence has been wrongly admitted and is of such a nature as to prejudice the fair trial of the applicant, it cannot easily be said that there has been no miscarriage of justice. To look at the matter from the other standpoint discussed in the full bench case of *Lawrie*, irregularities of this kind always require to be 'excused' or condoned if they can be excused or condoned, whether by the existence of urgency, the relative triviality of the irregularity, or other circumstances. This is not a case where I feel disposed to 'excuse' the conduct of the Police. The proper procedure for search of the appellant's house by obtaining a search warrant was duly followed out, and it would have been very simple for the Police to have adopted the appropriate procedure in relation to a search of his person. Why they did not do so, we do not yet know. Exactly the same information was available to them when they scraped the appellant's finger-nails as when they charged and apprehended him shortly afterwards; and if the charge and apprehension were justified, these should have preceded and not followed the examination of his person.

"In the whole circumstances, although with some regret, for the matter was never properly raised in the Court below, I feel that there is no option but to quash this conviction because, unless the principles under which Police investigations are carried out are adhered to with reasonable strictness, the anchor of the entire system for the protection of the public will very soon begin to drag."

Driving on a Footway

McArthur v. *Jack* (1950, *S.L.T.* 68)

The appellant in this case had been convicted, in Dunfermline police court, on a complaint charging that he did, in Bruce Street, in the Burgh of Dunfermline, " drive a motor vehicle on the west footway of said Bruce Street near its junction with Buffie's Brae, contrary to the Burgh Police (Scotland) Act, 1892, section 381 (13)." The arguments advanced against conviction were (1) that no offence had been committed—on the view that the Act did not penalise a mere momentary encroachment on a footway and that a driver could not be said to drive " upon " a footway unless he encroached upon it to an extent (in distance and time) which suggested that he had chosen the footway in preference to the road; (2) that, in any event, the offence was purely technical ; and (3) that if the appellant could show that he had reasonable cause for encroaching upon the footway he was entitled to be acquitted. The appeal failed.

Briefly stated, the facts on which the conviction proceeded were —that about 5 p.m. on the date libelled the appellant was driving a bus northwards along Bruce Street; that he was close to the west pavement ; that he had a full complement of passengers ; that the carriageway at that part of Bruce Street was 15 ft. 3 ins. wide and the width of the bus 7 ft. 6 ins.; that another bus (also 7 ft. 6 ins. wide) approached from the opposite direction ; that both vehicles were going slowly ; that the appellant applied his brakes and the rear end of his vehicle skidded slightly ; that his vehicle was driven so that the front near wheel was on the footway for a distance of eleven feet, encroaching to an extent of about 14 ins.; that the kerb is low (2 or 3 ins.); that, as a result of the vehicle's encroachment, a dog was killed on the footway; and that, when charged, the appellant said " I had to drive on the pavement to avoid colliding with the other bus. I did not see the dog."

In the opinion of the High Court Judges, to accept the construction of the section suggested by the appellant would be to depart from the plain words of the statute. No doubt it was a hard case, but the Magistrate had appreciated that and had merely admonished the appellant. " In police provisions such as these," said the Lord Justice-Clerk, " largely administrative and designed for the protection of the public, practical considerations dictate that there has to be some hard and fast rule. Otherwise every complaint would give rise to elaborate enquiry as to the extent of the infraction and possible excuses for it "; and he

quoted with approval the dictum of Lord Sands in *Howman* v. *Russell* (1923, *J.C.* 32) that "the protection of motor drivers must be the good sense and reasonableness of the authorities." It was for the authorities, in circumstances like those under review, carefully to consider whether the public interest was best served by prosecution. Lord Jamieson, in a concurring opinion, expressed the view that " a prosecution should never have been brought " and that to allow passage of buses in both directions along such a street was " little short of inviting a breach " of section 381 (13) of the Act of 1892—to which he added that he did not suppose that the prosecution would have been brought had it not been that the appellant " had the misfortune to run over and kill a dog, which he said he never saw and the failure to see which seems to me quite excusable when one considers that the appellant's eyes must naturally have been fixed on the other omnibus." In fairness to the authorities, one may be permitted to comment that they no doubt had in mind that the vehicle's encroachment, which did result in the killing of a dog, might, in slightly different circumstances, have resulted in the death of a child.

Is an Instructor " In Charge " ?

We note with interest the decision reached by Sheriff Cullen at Dundee sustaining the relevancy of a complaint under section 15 of the Road Traffic Act, 1930, directed against a motorist engaged in supervising a learner-driver—his son—the holder of a provisional licence. This decision was reached in face of a strong plea by the agent for the defence, who argued that his client could not be regarded as being " in charge " of a vehicle when another person (the driver) had the sole control of its mechanical operation. The Sheriff, on the other hand, took the view that the person supervising had complete control. He could give directions and the person having physical control was bound to obey him. It could be presumed that a supervisor was entitled to exercise control not only by direction but physically.

Refresher Courses for Constables

By J. F. SKITTERY
Chief Constable of Plymouth

IN recent years, and particularly since the end of the late war, great emphasis has been placed upon the training of Police, and there are now not many police officers serving whose only instruction before putting on uniform and going on to the streets was a fortnight's foot drill at the local military barracks. There is great enthusiasm throughout the Police Service as a whole for better and more frequent opportunities for training.

The various reports of the Police Post-war Committee have dealt at length with training, with particular emphasis upon the training of probationer constables and the formation of a national police college for the training of potential inspectors. In addition, immediately after the war the need for refresher training for men who had returned from service with the armed forces was apparent, and this need was met in most of the larger forces by running such courses for their own men, at the same time accepting to their courses returned members of the smaller police forces which had not the personnel to organise this aspect of training within their own forces.

It was obviously necessary that in the initial post-war days training energies should be directed primarily to probationer constables, and secondly to these returning members of the armed forces, but I did find that after a time there was a feeling among the older constables, men recruited, for example, in the early nineteen-thirties, who were not affected by the call-up for military service, and who were not able to volunteer for the fighting services, that a great deal was being done in the way of training for the probationer and the returned member, but little or nothing for them.

With a view to satisfying the desire of these men for some training facilities, refresher training courses for older constables were started in the autumn of 1948 in the Plymouth City Police Force, and it is with this aspect of training that this articles is concerned. We have now run five such refresher courses in the Force, and at the moment of writing this article the sixth course is being held. So far eighty-one constables have attended these local refresher courses, and the first four courses were made up entirely of men who joined prior to the last war. In the last two courses in addition to the pre-war constables there have been added some of the post-war men with about three-and-a-half years' service.

In the first place, the course is intended to be, as its name implies, refreshment. Men attending so far have been drawn from all years of service, the majority having from ten to twenty years', with a few having as little as three-and-a-half years' service, and they have all been from the uniform branch. While it cannot be said that all uniform officers of over ten years' service are of the same standard of ability, generally speaking they have by then become, if they are ever so to become, sound, practical street officers, and while the course seeks to improve their professional knowledge and ability, it has as its definite aim the desire to give these men something which differs from the normal routine of eight hours' patrol on the streets in all weathers. The policy of now including a few of the younger men who have

passed out of their probationary period is to ensure that they get to know their older colleagues and have the benefit of learning from their experiences, which are brought out during the course. As a study of the programme later on in this article shows, the hours are not onerous, there is a lengthy refreshment break in the middle of the day, and men warned for the course have Saturday afternoon and Sunday off. With the object of giving them this deviation from the normal routine when they would most notice it from a weather point of view, the courses are only held during the late autumn and winter months.

A very definite attempt is made to broaden the man's outlook and stimulate his interest rather than to cram law and procedure—which he should already know—down his throat. Care has been taken to borrow from modern techniques of instruction, at present so fully used at the Police College. The courses are of a fortnight's duration, and though we have made various experiments with numbers, it seems that twelve is about the ideal number of men to have on any one course. While many more men can attend lectures, any greater number than twelve on a course of this nature is not so satisfactory from the point of view of discussions on prepared agenda or practical demonstrations.

In a force of an establishment of just over three hundred the arrangements for the control of the courses have had to be made at some slight detriment to divisional working. A divisional superintendent, who has had the advantage of attending Course "B" at the Police College, has been generally responsible to me for the conduct of the courses. He has had to perform all his normal divisional work, at the same time giving as much attention as possible during the courses to supervising the arrangements. A patrol inspector who has attended the junior course at the Police College has been detached from divisional duties, and under the superintendent has acted as director of the course.

While more lectures are given by the director of the course than any other individual lecturer, it has been found possible to vary the lecturers to such an extent that besides those lectures given by me, the men hear during the fortnight three superintendents, four inspectors, four detective-sergeants, one constable, and one or two outside lecturers.

The following two days taken from the syllabus of the fifth course give a fair example of the type of work done in the fortnight:

TUESDAY, NOVEMBER 29

9 a.m.-10.20 a.m. "Assaults," by the Course Director.
10.30 a.m.-11.50 a.m. "Licensed Premises and Clubs," by the Chief Constable.
12 noon-1 p.m. Demonstration and discussion.

2.45 p.m.-3.45 p.m. "The Functions of the Coroner's Officer," by the Coroner's Officer.

4 p.m.-4.15 p.m. Foot drill.

4.15 p.m.-5.15 p.m. Lecturettes.

WEDNESDAY, NOVEMBER 30

9 a.m.-10.20 a.m. "Breaking Offences," by a Detective Sergeant.

10.30 a.m.-11.50 a.m. "Criminal Justice Act, 1948," by the Detective Superintendent.

12 noon-1 p.m. "Police Administration," by the Chief Clerk.

2.45 p.m.- 4 p.m. "How a Modern Newspaper is Made," by a senior reporter of a local newspaper.

4.15 p.m.-5.15 p.m. Discussion on a prepared agenda.

The demonstration and discussion shown on the first specimen day followed on naturally from the lecture on licensed premises, and consisted in dealing with a case of a licensee selling intoxicating liquor after hours. In staging a practical demonstration, two students are selected by the director to play the parts of a constable on the beat and the section sergeant. Two or more students are then briefed to play the parts allotted them in simulating the incident. The two men who are acting as the beat constable and the sergeant are not present at the briefing and after the scene is set they enter and deal with the incident. At the conclusion of the demonstration the director of the course conducts a discussion upon the way in which the beat constable and sergeant dealt with the incident concerned and corrects mistakes which may have been made.

Other such incidents dealt with at these demonstrations are driving a motor-car under the influence of drink, disorderly conduct and breach of the peace at a public meeting, uttering a counterfeit coin in a shop, the holding of an identification parade.

The lecturette period comes into the programme frequently enough to provide that during the fortnight every member of the course speaks to the remainder for a period of not less than fifteen minutes. The men are not limited in their subjects to matters connected with police duties—in fact, they are encouraged to give a talk about their particular hobby or a trade which they knew prior to joining the service. During the last course, lecturettes upon the following twelve subjects were given by the students:

Smithing in H.M. Dockyard; British butterflies; Tool making; Elementary theory of music; Gardening hints; Badger-digging; The railway signal system; Sponges; Clock repairing; The construction and maintenance of a motor-car battery; German military intelligence; Coal mining.

I have made it my business to listen to as many of these lecturettes as possible, and while, as the list shows, not one of these subjects is closely connected with police duties, many of these talks reach a high standard, and, I think, bring out a man's personality and assist in developing his confidence and that command of a situation which is so necessary to him when called upon to deal with some matter for the public.

It will be noted that on one of the specimen days shown there was a period of fifteen minutes' foot drill. During the course seven such short periods are put in when the men do elementary drill movements and marching in the police yard. This short drill period has been welcomed by the men, and in a city where ceremonial occasions are not infrequent, it seems a very useful addition to the syllabus.

On the second specimen day shown mention is made of an outside lecturer, and it has been possible in each course to get one or two outside lecturers. The lecture on how a modern newspaper is made, given by a senior newspaper reporter, was very well delivered and of quite absorbing interest. The discussion on a prepared agenda which followed this lecture was on the relations between the Police and the public, with special reference to the press, and our lecturer on this occasion was invited to sit in with the students.

On previous courses lectures have been given by members of the Forensic Science Laboratory at Bristol, and by the superintendent of the local mental hospital. On one occasion when the course coincided with a visit of Mr. A. C. L. Morrison, C.B.E., to the city to lecture the local branch of the Magistrates' Association, arrangements were able to be made for the class then in session to form part of his audience.

I would call particular attention to two other aspects of the syllabus not shown in the specimen days. One afternoon is devoted to instructional sixteen-millimetre films, which we are able to get on loan from the Metropolitan Police, and two periods of an hour and a half each are devoted to a students' quiz, when the men are divided into two teams, and each team quizzes the other on matters connected with police duty. In this connection we insist that the question asked relates to some matter of practical police duty, preferably one which the man himself has personally dealt with. A typical such question was asked at a recent quiz, bearing out an experience which the man had had himself: "You are patrolling the waterfront when a man hands you the painter of a rowing boat which he says he has found drifting in Plymouth Sound. What action would you take and whom would you inform?" As a direct result of this question some members of the class became aware for the first time of the existence of a Receiver of Wrecks.

On the last Saturday I spend an hour and a half reviewing the course with the students, when each man is asked to give his views on the preceding fortnight and free criticism is allowed on all aspects of the course. As a result of these reviews certain alterations have been made, but the most noticeable factor that has come out of these reviews is that the older men are very appreciative of the opportunity to attend such a course. Frequently men of eighteen to twenty years' service have said that this is the first time they have sat at a desk since the elementary instruction they received when they joined.

My own conclusion is that such courses, while meaning a considerable amount of work and organisation, are very well worth while and very necessary in the interests of the service. I hold the view that a fortnight is long enough, that normally a man would not require to attend another course in under five years, and that wherever the size of the force permits of such courses being held locally, it is infinitely preferable to do this rather than send men away to residential courses at a training centre, with the consequent disruption of their normal family life.

The Acid-Bath Murder(s)

Rex v. John George Haigh

By Dr. H. S. HOLDEN
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AND
Dr. KEITH SIMPSON
Reader in Forensic Medicine, University of London

THE disposal of the dead body has always been a major problem in planned murder. The ' perfect murder ' attempts to solve the problem by producing conditions indistinguishable from accident, but, when a series of murders is planned, the repetition of some ' accident ' such as the series of drownings in the ' Brides in the bath ' case may arouse profound suspicion and lead to conviction.

A successful solution is obviously a matter of extreme difficulty, since it must provide (*a*) a reasonable explanation of the disappearance of the victim and (*b*) the complete destruction of the body without leaving any recognisable traces.

Burial in an isolated spot (Godalming ' Wigwam ' girl), dismemberment and burial (Dobkin ' Baptist church cellar ' case), dismemberment and dispersal of the separate parts of the body (Mahon, the ' Crumbles ' case, and the Ruxton case), burning of the victim (Rouse case), and even complete disposal at sea (Camb, ' Porthole ' case), have all failed.

The use of a powerful chemical reagent capable of completely dissolving the remains of the victim has obvious attractions, and, in fiction, has been used by ' Sapper ' in his novel *Bulldog Drummond*, and in real life possibly by Landru, the French Bluebeard. The annals of crime in this country have not, however, provided a parallel to these cases until John George Haigh in 1949, planning with care and carrying out his plans with a cool disregard for risks, disposed of the murdered body of Mrs. Olive Durand-Deacon, a quiet-living old lady of means who resided at a Kensington hotel.

The account of this case is not concerned with the facts relating to the disappearance, without trace, of the bodies of five other people who had also met Haigh ' on business,' and who can hardly have been likely suddenly to start living nomadic and obscure existences without property or papers to which they were still entitled. It is not unreasonable to assume that closely parallel circumstances accounted for these five people, but the case against Haigh was not concerned with these. This account sets out the proof of a cool scientific murder which was exposed by alert police action and by the meticulous and detailed laboratory study of the available material. Conviction followed on this count alone.

The Initial Stages of the Enquiry

At some time between 2 p.m. and 2.30 p.m. on February 18th, 1949, Mrs. Olive Durand-Deacon, a well-to-do widow living alone, left the Onslow Court Hotel in Kensington without saying where she was going. She was never seen again. Her failure to come to meals was at once commented upon, and by the following day a Mrs. Lane, a close friend of hers who also lived in the hotel, expressed anxiety. A man who had for some days worked up an acquaintance with Mrs. Durand-Deacon made some enquiry about her health and suggested on the following day that she might have fallen ill or lost her memory. Mrs. Lane grew suspicious by the second day, and made it clear she was going to the Chelsea Police Station that afternoon. The man accompanied her, saying he might be able to help them: he certainly might, for the name he left at the station was ' J. G. Haigh.'

The initial stages of the enquiry, since these concerned the tracing of a person reported missing under suspicious circumstances in the Metropolitan Police District, were under the direction of Chief Superintendent Barrett, who detailed Chief Inspector Shelley Symes to carry out the necessary investigation. Policewoman Sergeant Lambourne had already been unfavourably impressed by Haigh's demeanour when Mrs. Durand-Deacon's disappearance had been reported at Chelsea Police Station, and, subsequent to her conveying her suspicions to Chief Inspector Symes, Haigh's antecedents were checked.

This check immediately established the fact that he was a C.R.O. man, a confidence trickster and a forger with several convictions, who might well be determined enough to commit some more serious crime for money.

On February 21st Haigh was interviewed by Chief Inspector Symes and Detective Inspector Webb at the Onslow Court Hotel, and a statement taken from him. In this statement he admitted that he was on friendly terms with Mrs. Durand-Deacon, and that he had secured her interest in a process for the manufacture of artificial finger nails, and he went on to state that he had arranged to meet her at the Army & Navy Stores at 2.30 p.m. on Friday, February 18th, and run her over to his workshop at Crawley. He said that when she left the hotel on that particular day she was wearing a black hat and a black astrakhan coat, and that she was carrying a red plastic handbag and had a brass cruciform [*sic*] on a chain round her neck. He had waited for some time, he said, but she had failed to keep the appointment, and he had returned to the hotel.

Haigh had, in fact, been seen at about the time Mrs. Durand-Deacon left the hotel going across the road to the garage where he kept a car. It could hardly be called his car, for enquiry revealed that since he had taken delivery of it he had 'sold' it four times, taking it on hire on each occasion from the firm to which he had 'sold' it.

The natural consequence of Haigh's references to Crawley was that the West Sussex Constabulary were asked to make enquiries there, and as a result of their findings a second statement from Haigh was taken by Chief Inspector Symes on February 24th. Although this purported to give additional details of his movements on February 18th, it did not differ in any material particular from that he had made previously. There was little doubt, however, that Haigh, in fact, *did* meet Mrs. Durand-Deacon, and, though he denied it, took her to Crawley, for later enquiry revealed that a garage proprietor had seen him at 3.45 p.m., the book-keeper of the George Hotel had seen him with a woman (later identified as Mrs. Durand-Deacon) in the hotel between 4 and 5 p.m., and at about 6.30 p.m. he was in a Crawley restaurant, leaving at about 7 p.m.

On February 26th Detective Sergeant P. J. Heslin, of the West Sussex Constabulary, examined the Crawley premises, which were situated in a yard on the outskirts of the town, and which were surrounded by a 6 ft. high fence. In a brick-built two-storey shed there were found three carboys and a group of documents in a leather case among which were papers belonging to two families who had disappeared in 1946 and 1947—Dr. and Mrs. Henderson, and the three McSwans.

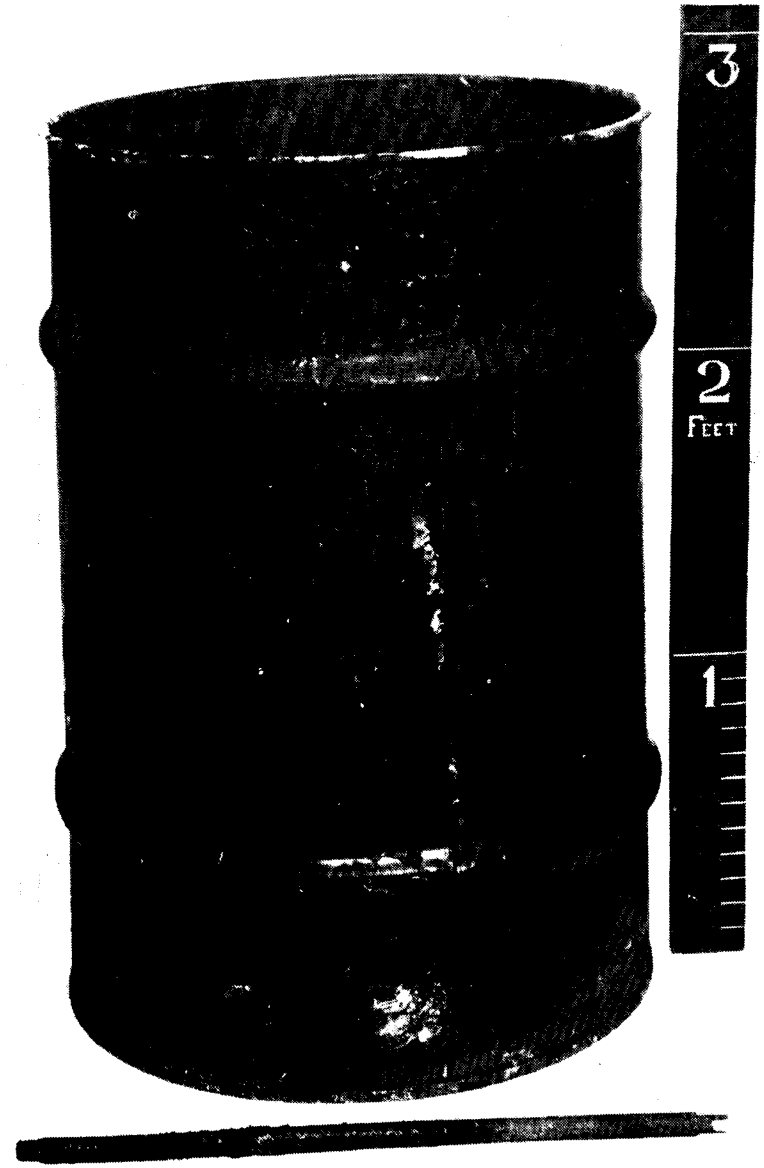
General view of inside the yard, including the storehouse

Close view of storehouse

(*face p.* 192)

Rubbish heap, showing drums

Interior of ground floor of storehouse, showing window, door, and bench with gas-mask and gloves thereon

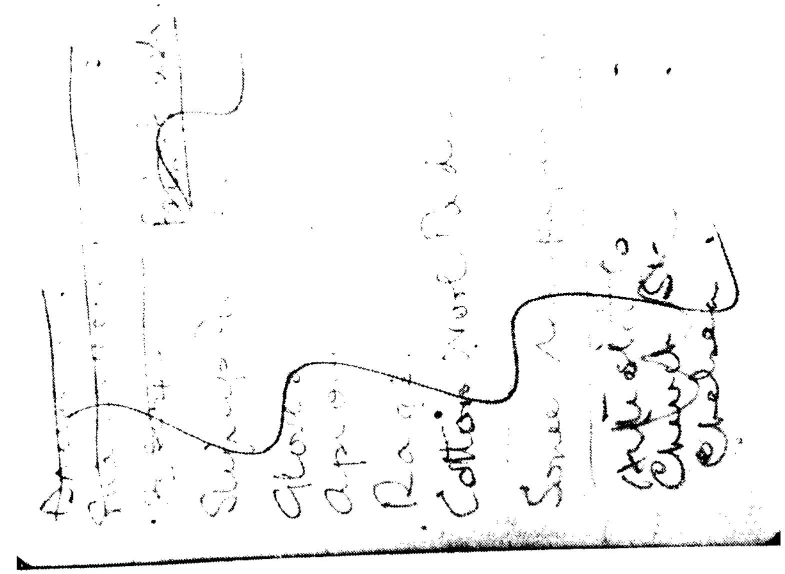


40-gallon acid drum showing dimensions and wooden stirring-stick

Showing dense sticky character of acid fat-digest, earth and stones searched for human remains and possessions of Mrs. Durand-Deacon

Three gallstones recovered from stony fat-digest and earth

Rubber apron, with blood-stained areas defined by chalk rings



Details on 'shopping list' made by Haigh

Above: Worn free edge of fabric of repair strip from bottom of coat lining
Below: Worn edge of fabric found in workbox

Above: Worn free edge of fabric of repair strip from bottom of coat lining
Below: Worn edge of fabric found in workbox

Material found in workbox — Material inside bottom of left sleeve of coat

In a leather attaché case there were found papers bearing the names of the McSwans, a contract note in Haigh's name, and a ration book for May B. S. McSwan, together with a receipt dated February 19th by the " Cottage Cleaners " at Reigate, for a Persian lamb coat.

In a hat-box marked ' H ' there was found a .38 Enfield revolver and eight live rounds, together with papers relating to Dr. Archibald Henderson and Mrs. Rosalie Henderson and to the three McSwans.

In consequence of this Chief Inspector Symes and Detective Inspector Webb that day again saw Haigh, and asked for an explanation of these discoveries.

He made a third statement, the major part of which related to matters other than the Durand-Deacon enquiry, but he explained the presence of the cleaner's ticket for the fur coat by saying that this had belonged to Mrs. Henderson. Chief Inspector Symes obtained possession of the coat and later showed it to Mrs. Lane and a Miss Fargus, Mrs. Durand-Deacon's sister. The result of their inspection left little doubt that the coat had belonged to Mrs. Durand-Deacon, but laboratory examination settled the matter beyond all possible doubt. When received at the laboratory the lining of the coat showed a patch-repair extending along the whole width of the bottom of the coat and both sleeve linings had been similarly repaired in the cuff region. The material forming these patches was carefully unpicked and compared with an assortment of pieces of similar fabric found in Mrs. Durand-Deacon's workbox at the Onslow Court Hotel. Photographs here reproduced show the results of this comparison. It will be seen from these that the irregular cut end of the left sleeve lining matches that of a detached piece of fabric from the workbox, and that there is a similar match between the worn areas from the repair strip at the bottom of the coat and a second detached piece found in the workbox. The examination of the coat yielded a further significant find, a small blood crust and bloodstain being present on the base of the collar and the adjacent lining. This was human blood.

Meanwhile, on February 28th, as a consequence of the wide publicity given to the case in the daily press, a Horsham jeweller and pawnbroker got in touch with the local police regarding certain jewellery brought to his shop by a man on February 19th (the day after Mrs. Durand-Deacon's disappearance). An arrangement had been made to pay him three days later, and he had taken £60 on February 22nd and a further £40 on February 29th; he had signed himself as ' J. McLean, of 52, St. George's Drive, S.W.', but an assistant recognised him as a man who had done business in February, 1948, as ' J. G. Haigh,' of Onslow Court Hotel, and it was this which had caused them to report the matter. The items consisted of five rings, a paste buckle, a paste clip, a pair of ear-rings, an opal tie-pin in a red case, a two-row pearl necklet and an emerald and diamond snap. (The assistant was interested in how the latter was worn, and Haigh had remarked that it was worn 'as a ring with a piece of wire twisted to form a shank,' just, in fact, as Mrs. Durand-Deacon had worn it.) It was identified by Mrs. Durand-Deacon's sister that day.

Chief Inspector Symes telephoned Detective Inspector Webb to see Haigh without delay, and Haigh was stopped in his car outside the hotel and taken to the Chelsea Police Station. Mr. Symes returned at 7.30 p.m. and at 9 p.m. was joined by Detective Inspector Webb.

Haigh then made some remarkable comments. He said to Mr. Webb: "Tell me frankly, what are the chances of anyone being released from Broadmoor ?"

Inspector Webb replied: "I cannot discuss that sort of thing with you."

Haigh: "Well, if I told you the truth, you would not believe me. It sounds too fantastic for belief."

Inspector Webb cautioned him, and Haigh said: "I understand all that. I'll tell you the truth about it. Mrs. Durand-Deacon no longer exists. She has disappeared completely, and no trace of her can ever be found." Mr. Webb asked what had happened to her, and Haigh said: "I have destroyed her with acid. You will find the sludge that remains at Leopold Road. I did the same with the Hendersons and McSwans. Every trace has gone. How can you prove murder if there is no body ?"

He then proceeded to make a fourth statement which provided a most remarkable account of a series of criminal exploits, the like of which was undoubtedly entirely new in English police enquiry. Its substance was as follows:

He had left the Onslow Court Hotel with Mrs. Durand-Deacon on the early afternoon of February 18th, and they went in his car to Crawley. He said he had 'inveigled her into going' through her interest in artificial finger nails, and while she was in the store-shed at Leopold Road looking at some plastic, he shot her through the back of the head. He then made an incision into the side of her throat with, he thought, a penknife, and collected a glass of blood, which he drank. He removed her Persian lamb coat and jewellery, after which he put her fully clothed into a 45-gallon steel tank. He went to a Crawley restaurant (where he was seen), and subsequently returned to the store, where he transferred some acid by means of a stirrup pump from a carboy into the tank containing Mrs. Durand-Deacon's body. (Previous experience had taught him that after some 20 or 30 minutes the tank got so hot that he could not touch it.) He returned to the George Hotel for dinner at about 9 p.m., and arrived in London at about 10.30 p.m.

He returned to Crawley next morning, selling a gold watch of Mrs. Durand-Deacon's for £10 at Putney on the way. He went to the store to see how the reaction had gone on. It was not satisfactorily completed, so he called at the jewellers (at Horsham) for a valuation and left the fur coat at the cleaners (at Reigate).

On Monday, February 21st, he returned to find some fat and bone floating in sludge in the bin. This he removed in a bucket, which he emptied on ground opposite the shed entrance, then pumping some more acid into the tank to dispose of any remaining tissues.

The next day he called at the Horsham jewellers again and completed the sale of Mrs. Durand-Deacon's jewellery.

On February 22nd he again visited Leopold Road and, finding decomposition complete, poured off the contents of the tank on to the acid ground opposite the door. He added that the only thing which the acid had not attacked was the plastic handbag, which he left outside in the yard and which Sergeant Appleyard, a West Sussex officer, stationed at Crawley, found concealed between a wall and a fence after several days' search.

(Haigh owed a co-director of Hurstlea Products £50, and he paid off £36 of this the day he got £60 on the jewellery. He had borrowed the £50 the day he took Mrs. Durand-Deacon to murder her, and he also owed £50 to Onslow Court Hotel, and some £300 to bookmakers.)

Corroboration of all this was effected during the next few days. Haigh, it was found, had bought a drum from an East London firm and changed it the same day for one 'resistant to corrosive fluid.' On February 16th he had bought acid from a London firm, having it delivered to Leopold Road on the following day. That same day he had bought a stirrup pump, getting his fellow director to knock off the leg.

(It should be said that no suspicion ever attached to this co-director. He had allowed Haigh the use of the store premises at Leopold Road for 'experimental work.')

In Haigh's belongings at Onslow Court Hotel there was found a written 'shopping list,' undated, setting out in order: 'Drum, enamelling (brush), H_2SO_4—which is the chemical formula for sulphuric acid—styrup pump (mis-spelt), gloves, apron, rags, cotton wool pad, some red papers, etc.'

The Investigation of the Murder

The finding and identification of the fur coat and jewellery, together with Haigh's fourth statement, indicated that the problem confronting the police was no longer that of tracing a missing person, but of establishing beyond reasonable doubt that Mrs. Durand-Deacon had been murdered and that Haigh was the murderer.

On March 1st a request was made by the Chief Constable of the West Sussex Constabulary to New Scotland Yard for the assistance of a Chief Inspector, and Chief Inspector (now Superintendent) Guy Mahon and Detective Sergeant A. C. Pennell took up enquiries, in collaboration with Superintendent P. A. Eagle and Detective Sergeant P. J. Heslin, of the West Sussex Force. This was one day after Haigh's fourth statement, eleven days after Mrs. Durand-Deacon had disappeared and, if Haigh were truthful in his last statement, seven days after he had poured away the dissolved body of his victim over the ground in the yard. There was little hope of finding much beyond residual acid 'sludge,' but, in fact, careful search revealed sufficient human remains to reconstruct and identify an individual.

The yard at Leopold Road on the outskirts of Crawley extends back from a side road between houses for about 30 yards. It has a frontage of 17 yards, protected by a six-foot high wooden fence, and is not overlooked, though houses lie close on all sides. The 'shed' concerned is a brick built two-storey building standing on the left-hand side immediately inside the yard and fitted with a solid door and a double front window. The yard road runs down the centre, and beyond the road, on the opposite side to the shed, is a patch of rough ground. When first examined, a deposit of greasy, granular sludge covering an area approximately 6 ft. by 4 ft. and some inches deep, was found lying on the surface.

The nature of this sludge rendered ordinary methods of search impracticable, and it was evident that, if in fact it represented the residue of a human body, it would demand many hours of patient examination.

However, preliminary inspection revealed a surprising and satisfying find. This was a set of three small objects about the size of cherry stones and not unlike the rounded pebbles among which they lay. Their colour and the clean polished facets, however, led to their immediate recognition as gallstones. Chemical examination by Dr. G. E. Turfitt, Deputy Director of the Metropolitan Police Laboratory, showed that they consisted of practically pure cholesterol—a feature in which they differed from gallstones found in mammals other than man, and their human origin was finally established by obtaining a positive precipitin reaction for human protein from an extract of part of one of the 'pebbles.'

A number of fragments of corroded bone were picked out from the partly charred and greasy mass at Crawley, but the main bulk, some 475 lbs. in weight, was carefully lifted and transferred in wooden boxes to New Scotland Yard for detailed examination.

A 40-gallon green-painted steel drum fitted with a lid lay on end near the sludge in the yard, and its interior was soiled with the same greasy substance: a hairpin lay at the bottom stuck in the grease. This was undoubtedly the drum Haigh had used to digest the body. It was later shown that he had purchased it in London for 'Union Group Engineering' on February 17th, having brought back a drum that was not resistant to corrosive the same day. A carboy of commercial sulphuric acid had been delivered on the same day at Leopold Road.

Inside the brick store-shed on the ground floor lay three 10-gallon carboys of strong sulphuric acid, one virtually empty, the others partly filled. A bench lay along two sides of the room, and on this lay several pieces of red plastic material (such as Haigh had suggested for 'artificial nails.') Immediately above one part of the bench a group of very finely spattered bloodstains lay on the whitewashed wall, in just the position one might expect if a person were shot through the head from behind whilst standing at that bench looking down on to it—as Mrs. Durand-Deacon probably did. These bloodstains were photographed and carefully detached from the plaster and their human origin established.

From the same room were taken a rubber apron and a pair of rubber gloves, a gas mask, two stirrup pumps and a pencil sharpener in a leather case, later identified as Mrs. Durand-Deacon's property. A bucket and a wooden rod, subsequently shown to be soiled with acidified body fat, lay discarded out in the yard. Haigh had scooped off surface 'scum' including body fat and gallstones whilst digestion was still going on.

During the following three days the 475 lbs. of dirty, yellow, greasy, partly charred residue, soaked into the pebbly earth, was patiently searched by spreading it out over steel trays on the laboratory bench at New Scotland Yard, any material requiring chemical examination, together with the drum, samples of liquid from the carboys, the rubber gloves and apron, the bucket and the wooden rod being referred to Dr. Turfitt.

Apart from the smaller irregular masses of yellow fatty matter which were distributed throughout the débris there was one exceptionally large fragment which surrounded a substantial hard core. Before dealing with this it was X-rayed and proved to contain the major part of a left human foot, which, by careful treatment, was removed intact.

The total list of significant finds resulting from the examination of the sludge is as follows:

(*a*) One handle of a red plastic handbag.
(*b*) The metal cap of a lipstick case.

(c) An intact upper denture.
(d) An intact lower denture.
(e) A mass, approximately 28 lbs. in weight, of a yellow greasy substance which appeared to be ' melted ' body fat. Chemical examination of this substance subsequently established that this mass did, in fact, consist of animal fat.
(f) Three facetted gallstones (proved to be human).
(g) The major part of a left foot.
(h) Eighteen fragments of human bone showing varying degrees of acid erosion.

The foot and the remaining eighteen fragments of bone were, after rigorous cleaning, subjected to detailed examination, both by direct methods and by X-ray and microscopy.

As a result of this study the various finds were shown to be:

1. The greater part of a left foot from the heel to the bases of the toes, together with intact skin, connective tissues, muscles and the ligaments of the sole of the foot.

2. A left ankle pivot bone (Talus).

3. A small part of the right foot with attached ligamentous tissues.

4. A right heel bone (Os calcis).

5. A right ankle pivot bone (Talus).

6. Three lengths of eroded long bone cortex, probably thigh bone (Femur).

7. Part of a right pelvic (hip-girdle) bone.

8. Part of a left pelvic (hip-girdle) bone.

9. A fragment of pelvic wing (hip crest).

10. A small piece of the lower spinal column, together with eroded parts of two intervertebral discs.

11. Seven further small fragments too far eroded for anatomical definition.

The whole of these acid-eroded fragments stood out sharply from a number of animal bones lying in the same soil mass and which showed no such changes.

The main inferences which could reasonably be drawn from the examination of the items isolated from the sludge were:

1. That the remains were human, as shown by the gallstones, the recognisable foot and the identifiable bone fragments.

2. That the indications of sex pointed to the remains being those of a female.

3. That, although no close estimate was possible, the somewhat fragile state of the bony tissues where these had not undergone erosion and the presence of osteo-arthritis in certain joints indicated late adult age.

4. There was no evidence that the remains represented parts of more than one body.

It will be noted that the anatomical indications as to the sex of the remains were supported to some extent by the occurrence of a hairpin in the sludge at the bottom of the drum and of a lipstick case top and part of a plastic handbag in the main mass of the débris.

The one crucial point which remained to be settled was that of identifying the remains as those of Mrs. Durand-Deacon, and on this point the evidence of Miss Helen Mayo, the deceased lady's dental surgeon, was decisive.

Miss Mayo identified both the upper and lower dentures recovered from the débris ' beyond any doubt ' as those she had fitted for Mrs. Durand-Deacon in September 1947. She was able to supply a detailed account of the distinctive features, including, among other things, " an exceptional amount of build-up and padding " to compensate for gum-shrinkage and also by the exact matching of the teeth in the dentures with the natural teeth of the deceased lady, about which she had made detailed notes. Miss Mayo also produced a plaster cast of a set she had made prior to 1943 for Mrs. Durand-Deacon showing the teeth of the lower jaw *in situ*.

The three major problems posed by the material recovered were therefore solved. They were human remains: they were the remains of an adult female; they were the remains of the missing person.

Quite apart from the problem of identification there were, however, a number of other matters which called for detailed study.

Considerable doubt had been expressed during the early stages of the enquiry as to the possibility of a complete body being reduced to a charred and greasy mass by strong sulphuric acid, and it was considered that the stouter bones, such as the pelvis and femur, would resist destruction. To resolve these doubts a number of experiments were performed by Dr. Turfitt.

In the first of these a freshly killed rat was immersed in its own volume of cold concentrated sulphuric acid. After an initial time-lag of about 10 minutes the liquid darkened and ultimately became a deep brownish black, the temperature gradually rising during these changes to 100 deg. C. After 30 minutes there remained only a black sludge containing a few eroded bone fragments, no recognisable tissue being left.

The second experiment consisted in the immersion of an amputated human foot in cold concentrated sulphuric acid. Gradual darkening of the liquid resulted with a simultaneous rise in temperature. As dissolution took place the foot settled in the liquid till it was completely immersed. After 4 hours no solid material was detectable in the hot muddy sludge, and, after 24 hours, the liquid had cooled and a surface layer of solid fat had developed.

This experiment was repeated with a second foot, the liquid on this occasion being stirred. The flesh and nails were found to disappear relatively quickly, the erosion of the bones being a much more gradual process.

Finally, the flesh was removed from the fresh leg-bone of a sheep, and, as in the previous experiments, this was immersed in cold concentrated acid. Darkening of the liquid and a rise in temperature were not apparent until after about six hours, the temperature at no time rising above 50 deg. C. The erosion and solution of the bone was very gradual and was not completed until after four days.

It is evident from these experiments that the interaction of concentrated sulphuric acid and the water present in a fully hydrated body are the factors which raise the temperature to a point at which the destruction of the tissues will be comparatively rapid. Any fat in the tissues will be resistant, even to the hot acid, and will, therefore, ultimately form a solid superficial layer as the reaction slows down and ceases.

It was obvious from Haigh's statement that he knew of the great heat generated during the solution of a body in acid, and he had consequently equipped himself with protective garments to guard against mishap. These were the stout rubber gloves, the rubber apron, the mackintosh and the gas-mask. All these, apart from the gas-mask, showed traces of sulphuric acid and animal fat, and similar residues were present in quantity in the drum and the bucket. Traces of the same kind occurred on the stout wooden rod, the surface of which at one end was corroded and partly disintegrated. This rod was made of beech wood, and there can be little doubt that Haigh used it to stir the contents of the drum during the destruction of the body. This view receives confirmation from the occurrence of fine splinters of beech wood associated with considerable smears of human blood in several areas on the rubber apron.

One final point is, perhaps, worth mention. The fact that approximately 28 lbs. of body fat were recovered from the sludge suggests that the murdered woman was stoutly built, and there can be little doubt that the partial, or, in some instances, complete preservation of the various items discovered during the search of the acid sludge was due to the protective action of a film of fat.

The Course of the Trial

Haigh was charged with the wilful murder of Mrs. (Olive Henrietta Helen Olivia Roberts) Durand-Deacon at Horsham Police Station, West Sussex, on March 2nd. He was committed for trial at the Central Criminal Court, but as a consequence of a request for adjournment made by his Counsel, Sir David Maxwell Fyfe, K.C., M.P., on the grounds that he had, as yet, been unable to complete the defence, Mr. Justice Travers Humphreys sent the case back to the following Sussex Assizes at Lewes. Here, before Mr. Justice Humphreys on July 18th and 19th, the trial was completed.

The Attorney-General (Sir Hartley Shawcross, K.C., M.P.), Mr. Eric Neve, K.C., and Mr. Gerald Howard, appeared for the prosecution, Haigh being again represented by Sir David Maxwell Fyfe, together with Mr. G. F. R. Morris and Mr. David Neve. A plea of 'Guilty,' which had been entered, was changed to 'Guilty of the acts charged, but insane at the time they were committed,' and as a result the prosecution's case was not pressed in great detail, or cross-examined. Thirty witnesses passed into and out of the box in some three and half hours to affirm the evidence already outlined.

The only witness called for the defence was a London psychiatrist, Dr. Henry Yellowlees. He had examined Haigh on behalf of the defence and had diagnosed a disease of the brain called paranoia, which he attributed partly to a particularly strictly religious upbringing Haigh had undoubtedly had. Paranoia consists largely of a disorder of perception, an intellectual anomaly—'not a lunatic in the common sense of the term' (quoted at trial from a text-book on mental disease). It is a state of systematic delusional disorder.

Dr. Yellowlees suggested, for Haigh, that he took an artistic pride in the skill with which he could deceive his fellows, a petty vanity and conceit which, according to what Haigh had told him, excused a really artistic or skilful killing (he did not like the word murder in this connection). He thought himself to be the instrument of an outside power, obeying dream visions in which blood played no small part and though in some vague way feeling he was not really punishable like ordinary people he concealed his 'killing' because 'he knew perfectly well that murder was punishable by law and, like any other sensible man, he was anxious to avoid it.'

Haigh's previous crimes were all admitted—in order to bolster up the impression that this was a maniac in murder, but, of course, the remarkable details of these only served further to emphasise that Haigh's one design was gain—as property and money, and that after killing he not only took steps to conceal his crime but set out cunningly by forgery and deceit to benefit.

On the drinking of blood Dr. Yellowlees had accepted Haigh's story, but the prosecution very much doubted whether there was any truth whatever in this. Both this and the practice of urine drinking, which Haigh also confessed, appeared more likely to have been introduced in order to heighten the colour of his eccentricities in the eyes of a jury.

Mr. Justice Humphreys reflected the grim mood of the jury on

Haigh's excuses for a series of carefully planned killings for gain by asking: ' Does he really think he will not be punished; that if he is caught stealing, or killing anything else, that he will not be punished ? ' The psychiatrist at first said that he was not prepared to answer what, in fact, was the only question concerning the Court -' Did accused suffer from a defect of reason because of disease of the brain so that, at the time of killing, he either did not know what he was doing or (if he did know) that it was wrong.' Under cross-examination by Sir Hartley Shawcross he suffered devastating damage to the psychiatric excuses he had put forward on behalf of Haigh, and finally admitted that he thought accused *did* know that what he was doing was punishable by law.

It was a hopeless kind of defence, and one could only feel sympathy for a distinguished and able Counsel who had the task of arguing it before a plain lay jury under the direction of a shrewd and experienced Judge of the criminal bar. The jury took only some eighteen minutes to consider their verdict. It was ' Guilty.' No appeal was lodged, and Haigh was executed at Wandsworth Prison on August 10th, 1949.

Riding or Driving to the Danger of the Public

BY SERGEANT GILBERT GARFORTH
East Sussex Constabulary, Hove

(*Continued from page* 129)

OFFENCES AGAINST THE PERSON ACT, 1861 -SECTION 35

IF bodily harm is caused to any person as a result of Wanton or Furious driving, this Section creates an Indictable Misdemeanour and provides punishment not exceeding two years' imprisonment.

This Section reads as follows:

> " Whosoever having the charge of any carriage or vehicle shall, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever."

1. This Act is similar to the Stage Carriage Act, 1832, in respect to the place where the offence can be committed. A search through our law books fails to assist us; therefore, in the absence of any mentioned place, we presume that the offence can be committed anywhere, no matter whether the incident takes place on public or private property.

2. Although this offence is a serious one and is classified as an Indictable Misdemeanour, the Offences Against the Person Act, 1861, does not give any person power to arrest without warrant.

3. The person against whom proceedings can be taken is described in this Section as the person who has the ' charge ' of the carriage or vehicle. It does not always follow that the driver of the carriage or vehicle is the person having the charge of same. An illustration of this can best be shown by the following example. A steam-engine engaged in timber felling on private property was in the charge of a steersman assisted by a fireman. At the time of the occurrence the fireman, contrary to the instruction of the employer but with the knowledge of the steersman, was driving the engine whilst the steersman was attending to other duties on the vehicle. As a result of wilful neglect on the part of the fireman in driving the engine an accident occurred, whereby bodily harm was caused to a lumberjack engaged on the site.

4. There is no mention made in this Section of animals; the conveyance used in connection with this offence is a carriage or vehicle. As there is no definition of either of these two words in the Act, we have therefore to examine the Oxford English Dictionary. ' Vehicle ' is defined as meaning any means of carriage, conveyance or transport; a means of conveyance provided with wheels or runners and used for the carriage of persons or goods. The word ' carriage ' includes vehicles used during the period when the Act was made.

5. The offence is committed whilst the offender is either driving or racing the carriage or vehicle in a wanton or furious manner, or by wilful neglect or misconduct, and as a result of the offender's conduct, he does or causes to be done bodily harm to any person. The injury caused is ' bodily harm ' which can be said to include any hurt calculated to interfere with the health or comfort of the injured person. This Act is unlike the Highways Act, 1835, in respect to injury; in the former ' bodily harm ' which is of a more serious nature must be caused, where in the latter ' any hurt,' no matter how slight, must be caused. Convictions have been recorded against the rider of a bicycle who was racing it in a wanton and furious manner which resulted in injuring another person. Our text-books tell us that ' wanton ' is not a term of art and need not be defined to a jury. But, we may ask ourselves, what is the meaning of the word ? It is said to mean: to move loosely; frolicsome or unrestrained.

6. The maximum punishment provided for a breach of this Section is two years' imprisonment. There appears to be no alternative, which is unlike any other Act dealing with the same type of crime.

An abridgement of this Section can be made as follows:

Penalty	—	Two years' imprisonment.
Place	—	No place mentioned.
Arrest	—	No power of arrest without warrant.
Person	—	Person in charge.

Conveyance — Carriage or Vehicle.
Offence — By Wanton or Furious driving or racing, or wilful misconduct or wilful neglect does, or causes to be done, bodily harm to some person.

PUBLIC HEALTH ACT, 1925—SECTION 74 (2)

This sub-Section reads as follows:

"If any person rides or drives so as to endanger the life or limb of any person or to the common danger of the passengers in any street, not being a street within the Metropolitan Police District, he may be arrested without warrant by any constable who witnesses the occurrence, and any person who so rides or drives as aforesaid shall be liable to a fine not exceeding £5."

1. This offence is committed in any 'street,' which includes any highway, a highway over any bridge and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. It does not, however, include a street within the Metropolitan Police District. Similar powers for this offence are contained in the Metropolitan Police Act, 1839.

2. This Section not only creates the offence but gives a constable witnessing it power of arrest without warrant.

3. The person offending against this Act is similar to the person named in the Highways Act, 1835, and the Town Police Clauses Act, 1847, and he must be either the Rider or the Driver of the conveyance.

4. The peculiarity about this Section is that no mention is made of the type of conveyance the offender must drive or ride; therefore, provided the carriage, vehicle or animals can be driven or ridden and the offender is the driver or rider, he can, by committing certain acts, be charged with this offence.

5. Two offences are disclosed in the Section: (*a*) Driving or Riding so as to endanger life or limb of any person, and (*b*) Driving or Riding to the common danger of passengers in the street. We need not prove that any hurt was caused, or that the conveyance was being driven or ridden furiously. What is necessary to prove, however, is that the life or limb of a person was endangered by the person driving or riding the conveyance, or that by his driving or riding he was a common danger to passengers in the street.

6. The maximum fine which can be imposed for a breach of the Section is £5.

An abstract of this Section can be composed as follows:

Penalty — £5.
Place — Street (except in Metropolitan Police District).
Arrest — Constable witnessing.

Person — Driver or Rider.
Conveyance — No conveyance mentioned.
Offence — (*a*) Endanger life or limb of any person.
(*b*) Common danger of passengers in the street.

ROAD TRAFFIC ACT, 1930

If the offender is driving a motor vehicle we invariably examine the Road Traffic Acts to see if an offence is disclosed. Turning to Section 11 of the 1930 Act we read:

Reckless or Dangerous Driving

"If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road shall be liable . . ."

Section 12 of the same Act reads as follows:—

Careless Driving

"If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence."

1. To constitute an offence the motor vehicle must be driven on a 'road,' which means any highway and any other road to which the public has access, and includes bridges over which a road passes. It also includes the footway as well as the carriageway, and a private occupation road leading to a farm, if at the time the public has access. But it has been held that a road within the fenced boundaries of a factory, the factory being accessible only to those with a special pass, is not a 'road' within the definition. The definition may include a private forecourt of a hotel to which the public has access. The interpretation of the definition seems to be that if at the time of the incident the public had access to the road, then it comes within the definition.

2. Power to arrest without warrant is given in Section 20 (2) of the Road Traffic Act, 1930.

"Any Police Constable may arrest without warrant the driver of any motor vehicle who within his view commits any offence under the provisions of this Act as to reckless or dangerous driving or careless driving, unless the driver either gives his name and address or produces his licence for examination."

Our text-books tell us that this power may be exercised where there is an honest belief on reasonable grounds that the offence is being committed by the person apprehended.

The important points to be borne in mind about this sub-Section are that before this power can be exercised (*a*) the constable must witness the offence, *and* (*b*) the offender must refuse either (i) his name and address, or (ii) fail to produce his licence.

3. Who can commit these offences? The Sections say ' If any person drives.' What is a ' driver ' for the purpose of this Act? The only definition in the Act is that given in Section 121. It says that ' driver,' where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle. The High Court's interpretation of this definition is found in *Wallace* v. *Major* (1946) *K.B.* 473. The appeal judges said, " Before the steersman of a towed lorry could be convicted of dangerous ' driving ' he must at least be driving a vehicle—that is to say, making it go; and a person merely at the steering wheel, who had nothing to do with the propulsion of the vehicle, could not be said to be driving it." A similar conclusion was arrived at by Mr. Justice Charles in 1934 at Warwick Assizes when he said amongst other things: " Section 121 said that the word ' driver ' also connoted ' steersman '; but when you looked at the definition of driver it was clear that it did not apply in the case of towed vehicles."

We may ask ourselves the question, what is the position where the driver is a learner and is accompanied by his teacher as a passenger? We find that if the teacher fails to discharge his duty and the learner commits either of these offences the teacher can be charged with aiding and abetting. A person present in the vehicle at the time of the offence who aids, abets, etc., the offence, is liable to be indicted, tried and punished as a principal (Accessories and Abettors Act, 1861, S. 8) and the provisions as to disqualification and endorsement of his driving licence are the same as if he was the driver.

4. The only type of vehicle which can be concerned in these offences is a ' motor vehicle,' which means all mechanically propelled vehicles intended or adapted for use on roads excluding tramcars. These two Sections are, however, applicable to trolley vehicles.

5. Let us next consider what the offender must do to constitute the offence of ' Dangerous Driving.' The Section says that he must drive ' Recklessly or at a speed or in a manner which is dangerous.' There are three separate and distinct offences in this Section; but on a charge of driving in a manner dangerous to the public evidence can be given as to the speed at which the vehicle was being driven.

The Statute contains no legal interpretation of the words ' Reckless,' ' Speed ' or ' Manner Dangerous.' The dictionary gives the meaning of ' Reckless ' as ' heedless, careless, in a reckless manner, rashly negligent, indifferent, regardless.' Therefore, to constitute an offence of ' recklessly ' driving a motor vehicle, the defendant's action should be done negligently and in a rash or hasty manner, heedless and

indifferent as to the consequences of his action. Evidence as to this can sometimes be obtained from the statement made by the accused in answer to questions we put before we make up our minds to charge him with any offence.

Our text-books tell us that an offence of driving at a ' speed ' dangerous is where a motor vehicle is travelling at such a speed that it is a potential danger to the public. No person need be actually endangered. The speed the motor vehicle is travelling need not be in excess of that laid down by law, but to constitute an offence under this Section it should be excessive for the particular surroundings. A conviction was upheld where it was proved that the defendant drove through a village at a speed of 23 miles per hour and, as a result of the offender's speed, he became a potential danger to other persons using the road.

The meaning of the phrase ' Recklessly or at a speed or in a manner dangerous to the public ' should be taken in conjunction with the words which follow in the section ' Having regard to all the circumstances of the case, etc. . . .' We are told in *R.* v. *Howell* (1938) 103 *J.P.* 9 that if the driving, although dangerous in its consequences, was due to a ' mere ' error of judgment the defendant is entitled to be acquitted. Evidence may be given of the manner in which the defendant was driving his vehicle three miles away from the place where the actual offence was committed. The Court can hear evidence of all the circumstances of the case and other relevant facts, such as the observance or non-observance of the Highway Code, the nature, condition and use of the road.

In making out our report we have to paint a word picture of the scene and make it abundantly clear what took place there. The type of road or roads over which the vehicle traversed such as a bottleneck road, humpback bridge, cross-roads. The condition of these roads —were they under repair, had they recently been tarred and were they gritty, were they dry or wet and slippery? To what use are these roads put, do they lead to a football field or to a place of amusement, are they near a school, market place or 'bus terminus? We can also call evidence as to the amount of traffic using the road at the actual time of the incident and we can also call evidence of the amount of traffic which might reasonably be expected to be there. We have, therefore, to enquire diligently and ascertain who the best person is to give this evidence. We have to find a witness who possesses the faculty of observation and has a good memory. The type of traffic using the roads is a point which must not be lost sight of. We also have to bear in mind the time and day when the offence was committed; for instance, more care should be exercised by the driver of a car when nearing a school at 4 p.m. on a weekday when children are likely to be leaving, than should be exercised at the same time on Sunday. Likewise more care should be exercised when passing a church at the end of evening service on a Sunday, than when passing the same place at the same time during the week.

Section 12 creates a less serious offence under the heading of 'Careless Driving.' This Section is similar to Section 11, in that it creates two separate offences; they are driving "Without due care and attention" or "Without reasonable consideration for other persons using the road." Every person driving a motor vehicle on a road must be observant and exercise care. The driver must also show reasonable consideration for other persons using the road. If the defendant's driving does not amount to Dangerous or Reckless driving but he is inattentive and careless or he does not show reasonable consideration for other road users he can be charged with the less serious offence of 'Careless Driving' under Section 12.

6. The maximum penalty for an offence under Section 11 is

(*a*) On summary conviction, imprisonment for a period not exceeding four months, or £50 fine, and on a second or subsequent conviction to both four months' imprisonment and £100 fine.

(*b*) On conviction on indictment, to two years' imprisonment and a fine.

As this offence is punishable by imprisonment for a period exceeding three months, the person charged has a right to claim trial by jury.

The penalty for an offence under Section 12 is found in Section 113. It is punishable summarily by a fine not exceeding £20 and in the case of a second or subsequent conviction by a fine not exceeding £50 or imprisonment not exceeding three months.

The Court, in certain circumstances, has power to endorse and disqualify the offender's driving licence for any offence under Sections 11 and 12.

Disqualification

Dangerous Driving—Section 11. On a second or subsequent conviction for this offence the offender's licence *must* be disqualified, unless the Court having regard to the lapse of time since the previous conviction or for other special reason orders otherwise, but it *may* be disqualified on a first conviction.

Careless Driving—Section 12. The offender's licence *may* be disqualified for this offence for up to one month on a first conviction and for up to three months on a second conviction.

Any conviction for dangerous driving under Section 11 within the previous three years is to count as a previous conviction.

For a Criminal Offence in connection with the driving of a motor vehicle, exclusive of exceeding the speed limit for the first and second offence and any offence under Part IV of the Road Traffic Act, 1930 (which relates to Public Service Vehicles), the driving licence of an offender *may* be disqualified.

Much has been written about '*Special Reason*' and we find that it is one which is special to the facts which constitute the offence. A circumstance peculiar to the offender is not a special reason.

Endorsements

Dangerous Driving—Section 11. The Court *must* order the offender's licence to be endorsed for any offence of reckless or dangerous driving, or in any case where a person is disqualified by virtue of a conviction or by an order of the Court.

Careless Driving—Section 12. The licence *must* be endorsed unless for special reason the Court orders otherwise on conviction for this offence.

For a Criminal Offence in connection with the driving of a motor vehicle, exclusive of any offence under Part IV of the Road Traffic Act, 1930, the Court *may* order the licence to be endorsed.

The synopsis of the Section can be made as follows:

Penalty	—	Section 11. £100 and/or 2 years' imprisonment. Section 12. £50 or three months' imprisonment.
Place	—	Road where the public have access.
Arrest	—	Constable witnessing if driver does not give name and address or produce driving licence.
Person	—	Drives.
Conveyance	—	Motor vehicle.
Offence	—	Section 11. Recklessly, or at a speed or in a manner dangerous to the public. Section 12. Without due care and attention, or without reasonable consideration for other persons using the road.

The New Special Constabulary

By Inspector C. E. Turner
Wiltshire Constabulary

Dogberry: This is your charge; you shall comprehend all vagrom men; you are to bid any man stand, in the prince's name.
Watch: How, if 'a will not stand?
Dogberry: Why, then, take no note of him, but let him go; and presently call the rest of the watch together, and thank God you are rid of a knave.
Much Ado About Nothing, III, 3.

SHAKESPEARE, in his search for material to provide a satire on the police system of his time, could find no better opening than where the 'Regular' constable was briefing his temporary and less experienced colleagues of the Watch. It may be that the amateur policeman has been particularly vulnerable to caricature in all ages; at all events, the opening of a new campaign to expand the Special Constabulary is an opportune moment to consider whether this branch of police organisation, and our methods of training its more recent recruits, are as up-to-date as they might be in comparison with the rapid rate of police progress in other directions.

Under the Special Constables Act, 1831, power was given to justices to appoint special constables, but only where "any tumult, riot or felony had taken place or might be reasonably apprehended." For over a century, their appearances were limited to those fortunately rare occasions of local or national calamity, and it is not surprising that the regular police, though quite appreciative of their individual help, should give little or no thought to organising them into a collective or permanent body. The large-scale enlistments of 1939 were carried out, it is true, in an atmosphere of foreboding that their association with the regular police would be close and active for probably a long period, but this was at a time when any broad schemes for long-term co-operation were pigeon-holed if not precluded by the urgency of the moment. The Police Service was on its way to being overwhelmed with strange new duties just when it was fast losing many of its tried personnel; confronted with evacuees, the prospect of invasion and the whole gamut of A.R.P. from "Thunderflash" to "Blitzkrieg," it passively accepted each and all of the ancillary Services in the philosophic hope that it would all come right in the end. The regular police did their best in the circumstances to welcome and acclimatise their new colleagues, but the tendency to think of them all as constituting purely *ad hoc* organisations—as, indeed, they were—could not but make itself felt in the relationship between them.

When peace came, the Special Constabulary, alone of these ancillary Services, remained. Shortage of regular man-power caused the postponement of any measures for its return to normal conditions, and while many of its members retired in all but name, many continued to do active duty and still do. This does them great credit and shows that there is a nucleus of public-spirited men in the country around which the new organisation can be built. The extent to which it can be developed will depend, in the long run, on the degree of encouragement afforded by the Regular policemen, and their enthusiasm will in turn vary in direct ratio to the amount of practical use to which the special constables can be put.

It is not intended to embark on any discourse as to the rights and wrongs of the active employment of special constables in normal times, which is a highly controversial practice, but it will suffice to say that authority lays down as a minimum that they should be enrolled, encouraged and trained—which carries the implication that their

interest should be kept alive. In short, the Special Constabulary is now on a permanent footing. This calls for some reorientation of attitude on the part of the Regular police, and while carrying out their responsibility in rebuilding a voluntary Service they should keep an eye open as to how this can best be turned to practical advantage.

The Special Constabulary is unlike any other form of National Service in that, by force of nature, it has no real independent corporate existence. This can best be appreciated by looking at any County Force, where the Special Constabulary is chopped up, operationally and sometimes administratively, into a number of units, each one being clamped to a corresponding unit in the Regular Force and each one having little or no contact with any other, or even with its own senior officers, except on ceremonial or other such occasions. In any case, special constables look to the Regular Service for directions, rather than to their own officers.

Details of training for special constables have been fully dealt with in the Fourth Police Post-war Report, but training officers and others would do well to reflect upon this peculiar characteristic of the organisation and consider what special problems it creates, and what lessons can be learned from the last ten years.

The disintegrated structure of the organisation has tended to breed a vigorously parochial outlook among its members, who have been in the position of passengers confined in the cabin of a liner without knowing where it was going, or what kind of ship it was. The special constable's knowledge of the Police Service has in the past been largely derived from that of the few Regular policemen with whom he came into close contact, and where their views were narrow or distorted, his became so too. Training should, therefore, be designed to counteract this tendency by giving as broad a conception of the Service as is possible from the very outset, showing not only how the machinery works but also giving a standardised and authoritative sketch of such all-important matters as the relationship of the police with the public, to mention only one example. The whole problem is quite different from that of training ordinary recruits, and the text-book must be kept well in the background; technical detail and text-book jargon are more likely to scare than to enlighten, and the pupil will never thus be able to see the wood for the trees until he has acquired a balanced outlook and the ability to see things in their proper perspective.

In the Regular Police Service with its chain of command it is possible for a few, or even only one man, to instil discipline or *esprit de corps* from top to bottom, and the Service reflects the character of its leader. This does not apply to anything like the same extent in the Special Constabulary, divided, as it is, into mutually independent units, and the welfare and efficiency of each of these is largely dependent upon the degree of cohesion with the Regular unit to which it is attached; this may vary very considerably in different parts of the same Force. Every sub-divisional or section officer in the Regular Force who has special constables under his charge is the prime author of their strength or weakness and, once they have had their theoretical basic training, the responsibility must rest in the main with him alone.

Before the outbreak of the Second World War there existed a barrier between the Police and the public, which many police officers considered necessary to the efficient discharge of their duty. More enlightened thought has since done much towards breaking this down, but it has in no small measure been assisted by the relationship between Regular and voluntary police. Members of the wartime auxiliary Services, in particular the Special Constabulary, had the unique experience of being able to see both sides of the fence at once. They brought into the police station a draught of air from their own world; they took away with them afterwards at least an inkling of the police point of view. Due partly to this and partly to the camaraderie of the 'Blitz,' public opinion is today generally more favourable to the police than during the 1930s, and police tolerance and broadmindedness has correspondingly increased.

Much has been written on the importance of maintaining co-operation between Police and public, and the more recent publicity measures in road safety, crime-prevention and emergency telephone calls depend for their ultimate success on this co-operation being maintained and increased. The Police, in common with all sorts of other creeds and organisations, are now trying to 'sell' something to the general public, or train and educate them in some way, till the man-in-the-street is becoming tired and suspicious of any new attempt to 'get at' him, whether by screen, radio or other means; but he is still susceptible to the influence of what he hears passed on in the course of general conversation.

The task of the 'salesman' is an unenviable one, chiefly because he must of necessity so often approach persons who have little or no interest in what he has to say. Select for him only those men who are really interested and his task becomes a pleasure. This is precisely what the new campaign for special constables should do, and men with an innate interest in the Police Service should provide just the right material, as they are already well on their way towards becoming 'police-minded,' even before the training officer begins. Once they have acquired some vestige of the art of policemanship they will proceed, unconsciously perhaps, to train others and thereby, in their own small way, make good policemen.

It may be desired, for example, to put on a small road-safety show in public; if special constables are invited to see it sometime

beforehand some of them may, as civilians, have helpful criticisms or suggestions to offer, or perhaps useful professional or technical knowledge (or apparatus!). They will not mind being given the role of guinea pigs, or even a job of work. They will absorb the teaching which the show is intended to convey, and will inevitably talk about it outside, thereby arousing the interest of others to go and see it.

A feature of recent years has been the rapid decline in the number of uniform beat patrols on foot or bicycle; if a motorist avoids the largest towns, he may now drive from one end of the country to the other and count those he sees on the fingers of one hand. In spite of this, the Police of today are quite as efficient if not more so, and it is doubtful whether, if foot and bicycle patrols were increased to their former establishment, it would result in any marked improvement in crime statistics. In one respect, however, the gradual passing of the local or village policeman, necessary though it may be, is leaving a gap in the Police Service; he knew—none better—the people of his parish and their gossip, and was admitted into the village circle; his store of local knowledge was greater than any stranger, or the driver of an area car, can possibly acquire, however many visits he might make.

If the countryside is to be patrolled by cars, the members of the crew can police it as effectively as it was policed before, and in many ways more so, but only by building up local contacts—which is not so easy as it sounds—and what better contacts could there be than trained special constables? Regardless of any official duties they might perform, they can act as the eyes and ears of the Service at the same time as they carry out their daily tasks, and from time to time pass on scraps of information to car patrols. If during their training they have seen the police machine at work, and helped to turn the handle, they will at least know how to contact police patrols and, what is most important, have some idea of what kind of occurrences warrant their being called. They should not, of course, be given the impression that they are mere common informers or that the mantle of the departed village constable is slowly being slipped over their shoulders.

The general public may on past occasions have been cynical in their attitude towards auxiliary police, and seen cause for amusement in any amateur attempts to perform traffic duty, but the special constable who can now call up all the resources of the Police Force by a press on the button will earn no little respect. Should any member of the public say he could do the same thing quite as well, then a stage is being reached when the lessons it is hoped to teach are really beginning to sink in.

These suggestions of police method involve little or no extra expenditure in time or money, and though they have been propounded with an eye to the more rural districts, they seem equally applicable to cities and towns. It is interesting here to note that the new model satellite towns are being designed not as one-cell units as the towns of today but more as a federation of large villages, each equally balanced and to some extent self-contained. In this new economy, or rather revival of a very ancient one dating back to Elizabethan or even Anglo-Saxon days, the importance of local institutions, including the village policeman or the more historic tythingman or hundredman, takes on a new lease of life.

The nationalisation of the Police Force is a bone of contention into which few policemen have not at some time or other dug their teeth, the majority to oppose any departure from their local connections and point to the bogey of political control. Though due consideration may be given to the wishes of the police themselves before any decision is taken in this direction, theirs will not be the only voice raised, and to the bureaucratic mind there is an ever-pleasing symmetry in centralised control which, if supported by any logical arguments in favour of cold, material efficiency, will be hard to counter.

The assertion that the roots of the Police Service are set deep down, each in its own local soil, is often brushed aside as being a sentimental 'cliché,' insincerely uttered; but if a strong and interested Special Constabulary can be built up, making some contribution to police efficiency, any such statement will have a more solid foundation in fact; not only that, the members of the new Service may prove useful allies, both by giving their own support and enlisting that of the general public against any attempt to override local feeling in the course of effecting any future reorganisation of the Police Service.

The Negligent Motorist

By Sergeant JAMES STANTON
Metropolitan Police

DURING the last twenty years road safety and accident prevention have become subjects which have increased in importance with the passage of time. Attention has been forcibly directed to this study by virtue of the large number of casualties which occur with unfailing regularity upon the roads of Great Britain. Various organisations have been established, committees of enquiry have been held and local authorities have employed accident prevention officers, all with the object of reducing the accident rate. Notwithstanding these efforts, the toll of the road has continued to mount, and one may perhaps conclude that the general public have come to accept the road casualty as the inevitable product of the motor-car age.

As police officers, we should be failing in our duty if we subscribed to such a view, and it is principally upon our exertions that the success of the road safety campaign depends. We, at least, armed with all the provisions of the Road Traffic Acts, are able to prosecute the careless or dangerous motorist, and there is little doubt that the fear of prosecution persuades many more motorists to exercise that care and consideration which make for accident-free driving.

It may be unfortunate that the weapon of legislation can only be directed at the vehicle user while the careless pedestrian is able to evade similar retribution, but Parliament has seen fit to place the aggregate of responsibility upon the motor driver, and it would not be politic to question this decision. Without doubt the motor vehicle can be quickly converted into a lethal instrument, and this same vehicle driven negligently must be held responsible for a considerable proportion of our traffic accidents.

Let us therefore direct the spotlight towards the negligent driver and some of the incidents in which he plays a major rôle.

It is as well that we should pause for a moment over the meaning of the word 'accident.' The dictionary defines this word as "chance or what happens by chance." Is this true of the average traffic collision? If so, then any efforts to reduce their number will be of no avail. One may as well attempt to stem the incoming tide. There are adequate grounds, however, for the contrary and more optimistic view. The usual traffic accident does not simply just happen, but is caused by human error or alternatively by mechanical failure resulting from lack of maintenance. Behind this error or failure may be that omission which more properly could be styled as an act of negligence. If the greater proportion of accidents are preventable, and it is suggested that ninety-nine per cent. of them are, it would be of interest to know the number of accidents which result from the careless or dangerous driving of motor vehicles.

Statisticians claim that they can provide the answer to this question and they publish figures to support their opinion; but one may venture to enquire whether these figures are correct. Should the published figures be other than correct, then we are not obtaining a true picture of the accident situation. Let it not be implied that the statistician has any interest in the 'squaring' of figures, but those who compound statistics rely for their essential information upon a number of sources, and it is there that the weakness of the system may be found. Traffic accident returns are based primarily upon police reports. Should these reports provide a mistaken conclusion as to the cause of the accident, then the resulting records must of necessity be erroneous.

An accurate accident report which recapitulates the incident concerned in a true light is largely a matter of accident investigation, and such investigation is a subject that, as yet, is not sufficiently understood by the police generally. Captain Popkess, Chief Constable of Nottingham, in his manual, *Mechanised Police Patrol*, devotes several pages of instructions to the technique of this investigation, and it is reasonable to infer that there is much more in dealing with a road accident than merely reporting the usual particulars.

Many accident reports, particularly those which deal with cases of minor damage only, are compiled with little or no investigation made by the reporting officer. Because of this, many reports which are the direct outcome of acts of dangerous or careless driving are allowed to be filed away without receiving further consideration, and supervising officers, without sufficient detail before them, are unable to acquaint themselves with the facts of each case. An illustration of this argument may be found in the number of collisions, particularly at road junctions, which are disposed of on paper as being due to an error of judgment. This finding, which many consider to be an unassailable excuse for the motorist concerned, is presumably related to the case of *Rex* v. *Howell* (1938) 103 *J.P.*9, and which ever since has been misconstrued by numerous police officers.

Howell, a motorist, was indicted at Birmingham on a charge of manslaughter, the sequel to a road accident. It was within the power of the jury, by virtue of *Rex* v. *Stringer* (1933) 1 *K.B.* 407, 97 *J.P.* 99, to return a verdict of guilty of dangerous driving if they were not absolutely satisfied with the manslaughter charge. Under no circumstances could they have properly brought a verdict of careless driving. The judge, Mr. Justice Lawrence, in his direction to the jury referred to the possible verdict relating to dangerous driving, and said: "If you think that he was guilty of a mere error of judgment, then you will find him not guilty." The jury acquitted Howell of the manslaughter charge, but, surprisingly enough, found him guilty of dangerous driving due to an error of judgment. This finding was quite contrary to the direction of the judge, and in response to a further direction they ultimately pronounced a verdict of guilty of dangerous driving. The accused was thereupon sentenced to four months' imprisonment, against which he duly appealed.

The Lord Chief Justice, before whom the appeal was heard, made it clear that by their verdict the jury had held the view that the appellant had been guilty of an error of judgment which had proved dangerous. In allowing the appeal the Court ruled that an error of judgment was not sufficient to constitute the offence of dangerous driving, therefore the appellant was entitled to be acquitted.

It must be emphasised that in this particular case the Court of Appeal was concerned with dangerous driving resulting from a manslaughter charge and it was not within their province to attempt to

decide whether the driving of Howell had been careless. While it is now clear that an error of judgment does not amount to dangerous driving, the question whether that same error may or may not amount to careless driving is still undecided.

One could visualise the circumstances where a motorist in overtaking another vehicle formed the opinion that he could safely pass between the vehicle overtaken and oncoming traffic. If, in fact, his judgment was at fault and as result he collided with a vehicle approaching from the opposite direction, then surely such driving displayed lack of care. Unless the driver concerned is mentally deranged his last desire is to be involved in an accident, yet it is as result of his mistaken appreciation of a situation that an accident takes place.

In the hypothetical case described one could advance the theory that the collision occurred, not because of an error of judgment, but because of lack of judgment, and lack of judgment could be held to constitute the offence of dangerous driving. Perplexing though the argument could become one may compromise by saying that it is a dangerous practice to drive a motor vehicle carelessly.

The Howell case is of assistance in endeavouring to distinguish the sometimes subtle difference between careless driving on the one hand and dangerous driving on the other. To support the latter charge, with which may also be grouped reckless driving, one should be prepared to prove an element of wantonness about the driving which embodies a degree of *mens rea*, *i.e.*, to produce legal criminal guilt a mental as well as a physical element is necessary. The conduct of the driver may either be active, or may consist of an omission where there is a legal duty to act; and the conduct of the driver must have caused the criminal act which the law seeks to prevent. A guilty mind alone is insufficient to constitute guilt. The reader may at once recall that when the famous Garrick declared that whenever he acted Richard III he felt like a murderer, Dr. Samuel Johnson retorted: "Then he ought to be hanged whenever he acts it." Such searching severity fortunately does not exist in the rules of law, the deed must accompany the thought.

The existence of *mens rea* was not established in the case of *Howell*, but the error of judgment which was presumably made might, had the accident not resulted fatally, terminated with a conviction for careless driving. It is suggested, therefore, that those officers who tend to write off a traffic accident as being due to an error of judgment should, before they close the file, first reconsider the matter and decide whether, apart from defeating the ends of justice, they are not leaving themselves open to censure.

Fortunately, the problem with which the Police are so often confronted in cases concerning the negligent driving of motor vehicles, whereby a decision must be made respecting the appropriate offence to be charged, is simplified by Section 35 of the Road Traffic Act 1934. If proceedings are taken under Section 11, that is for dangerous or reckless driving, a summary court may, if it considers the evidence insufficient, continue to deal with the matter as one of careless driving, so invoking Section 12. The reverse procedure does not hold good, and one may wonder how it is that frequently a solo charge of careless driving is preferred when the safer and wiser course would have been by way of Section 11 or better still, Sections 11 and 12.

The writer has in mind a case where a driver when prosecuted for driving without due care and attention was able to prove that he exercised care. At the same time, although care was shown, the driver's want of judgment resulted in an example of dangerous driving. As only Section 11 had been charged, no conviction could be upheld against him. A unique defence in all the circumstances.

A probable explanation for the course often taken by the prosecution in proceeding on the lesser count may be that the intention is to anticipate the decision of the magistrate at the particular court concerned. The whims and peculiarities of the Bench are perhaps too frequently catered for, and while there is much to be said for the art of diplomacy, it is a practice which can, and does, impede the course of justice.

The number of instances of the dangerous or careless driving of motor vehicles which are enacted daily would, if they could all be tabulated, surprise perhaps the most hardened statistician. Many of these cases may be elementary in detail, but it is suggested that they do happen on a very large scale.

Common examples are provided by the driver who pulls out of line of traffic without troubling to give a signal, and so inconveniences the traffic in his rear as well as our old acquaintance, the person who emerges from a side road into a major road and places himself directly in the path of an oncoming vehicle, thereby causing an accident or a near accident.

Perhaps it is because of the very simplicity of the evidence that few prosecutions are instituted on the lines of the two cases quoted above. There is a mistaken idea in the Police Service that in order to take a case to court one must first be able to relate a story which tells of disaster, and if at least one bandaged witness can be produced, then so much the greater chance of success.

This view is held by many, and personal experience brings to mind the case of a mobile police officer who witnessed a solo motor-cyclist ride at fast speed between a stationary tram-car and the nearside kerb, so scattering alighting passengers who were already in the roadway. The motor-cyclist was then stopped and reported for dangerous driving. The officer in charge of the police station where the report was delivered read through the evidence, and with a reproachful look in his eye turned to the constable, saying: "This is a funny sort of dangerous driving, there's been no accident."

Can it be that because of this attitude the personnel of the police traffic departments do not concentrate sufficiently on offences against Sections 11 and 12 of the Road Traffic Act? It would appear that they prefer to deal with the more straightforward cases of goods vehicles exceeding the speed-limit on de-restricted roads. This is to be deplored, because who is more suited to combat the dangerous driver than the mobile police patrol?

The case of *Bracegirdle* v. *Oxley* (1946), which was decided before the present Lord Chief Justice, is an encouraging example of the view held by the law lords in relation to that evidence which can be accepted as adequate in a prosecution for dangerous driving. The circumstances were that mobile police followed a heavy motor lorry along a length of main road for a distance of one mile. The lorry was restricted to a speed-limit of twenty miles per hour, but over the checked mile its speed varied between 40 and 44 miles per hour. During the check one other vehicle was overtaken, the overtaking occurring at a right-hand bend. No other traffic was encountered. A narrow bridge, a side road, a number of farm entrances and two bends constituted the topography of the road. There was no suggestion of direct danger being caused to any pedestrian, as no pedestrians were there. Having regard, however, to that traffic and those pedestrians which may have been on that road, the lorry was stopped and the driver was reported for not only exceeding a speed-limit, but also for driving at a speed dangerous to the public contrary to Section 11 (1) of the Road Traffic Act 1930.

The summary hearing was before the justices at Bucklow in Cheshire, who were not satisfied with the summons alleging dangerous driving, and proceeded to deal with the case as one of exceeding the speed-limit only. They convicted on the lesser summons.

The Police appealed against the decision of the justices, and Lord Goddard, who presided at the higher court, showed no hesitation in allowing this appeal. His judgment, which included a certain amount of criticism of the Bucklow Bench, drew a graphic word-picture of the heavy lorry "hurtling along the road and charging a narrow bridge." Of the summary court he said: "Justices in certain parts of Cheshire seemed to hold strange views on the question of dangerous driving."

Bracegirdle v. *Oxley* teaches nothing new in the interpretation of the law relating to Section 11, but it does serve to emphasise an oft-forgotten factor. The case of *Kingman* v. *Seager* (1938) 1 *K.B.* 397, 101 *J.P.* 543 had previously ruled that potential danger without the presence of actual danger was sufficient to satisfy this section.

How frequently it happens that a person drives in a potentially dangerous manner and how seldom it is that the circumstances are considered worthy of prosecution! Bearing in mind the above two decisions, the reluctance of the Police to initiate proceedings is not altogether justified.

We should, perhaps, be guilty of an omission if we left the case of *Bracegirdle* v. *Oxley* and many other similar cases without acknowledging the debt of gratitude which is owed by us all to those police forces who, by taking adverse decisions to the High Court, have obtained judicial rulings which considerably facilitate our own understanding of the complexities of the law.

Reflections on Section 11 of the Road Traffic Act may give rise to the thought that, small though the number of convictions under Section 11 may be when compared with the number of road accidents, even smaller are the convictions which result from reckless driving.

How does reckless driving differ from dangerous driving, and what are the requisites of this manner of driving? Case law is not very helpful on the subject, but *Troughton* v. *Manning*, 69 *J.P.* 207, provides food for thought. In the days before the Road Traffic Act, the toll-keeper of a bridge, while engaged on his duties, was confronted with a motorist who, apparently attempting to evade payment of the toll, declined to stop his vehicle and drove past the check point. The toll-keeper, no doubt filled with that zeal which is characteristic of most tax collectors, took hold of the moving vehicle and eventually losing hold, fell to the roadway and was injured.

The motorist was prosecuted for reckless driving which then infringed the Motor Car Act 1903; but the case against him failed on the grounds that the reckless driving must be to the jeopardy of persons on the highway and not those on the vehicle. The policeman of to-day need have little fear that such a decision would emanate from the legislation of the Road Traffic Act.

From time to time a parallel set of circumstances may apply, as when a police officer, in attempting to arrest motor-car bandits, boards the vehicle of the criminals who, in an endeavour to resist apprehension, drive their car close to such objects as a lamp-post with the deliberate intention of dislodging the police officer. Such driving is typical of reckless driving, the act being a flagrant one in the extreme. Until the High Court is presented with the opportunity of debating upon the question of reckless driving, we must rely upon our own judgment, and if we presume that the handling of the vehicle must approach the heinous, we shall not be so very wrong.

Having briefly examined some examples of the negligent driving of motor vehicles, one is tempted to theorise about the remedy. Certainly it seems that the art of good and safe driving is sadly misunderstood by many motorists. Looking ahead into the future years we must not forget that the driver of to-morrow is instructed by the driver of to-day, and it is probable that much of this instruction is faulty. Driving schools under the control of the Ministry of Transport should be opened throughout the country and instruction at these schools should be made compulsory for all learner drivers. The Police would have to act in liaison with these schools, and thus it would be practicable to place the basis of the new motorist's career upon more substantial ground. The Police Driving School at Hendon for the Metropolitan Police has more than proved its worth as a centre of instruction, and there is every reason for the gospels of this school to be preached to greater audiences.

Police traffic departments should be strengthened as soon as the manpower situation permits, and special patrols in plain clothes should be instituted, their principal task being the detection of the 'road hog.' No doubt this would evoke from certain quarters the old cry of "Gestapo!"; but we must be strong enough to withstand unbalanced criticism.

All traffic accidents should be investigated by officers of the traffic department, and the department should be made directly responsible for the reduction of accidents within their area.

Heavier penalties should be imposed upon those found guilty of negligent driving, and a period of disqualification should automatically apply. Lord Vansittart, in a letter published in the ***Daily Telegraph*** of October 19th, 1949, drew attention to a sentence of six months' imprisonment passed upon a man who, after killing three women with his car, was found guilty of dangerous driving. "Two months per life seems a low tariff," commented Lord Vansittart, and he went on to add that he hoped that the judge's words, which described the case as the worst ever heard, "will arouse a widespread feeling in favour of sterner measures, and so bring to the long-suffering public a prospect of security unattainable by posters and other unheeded exhortations." Perhaps Lord Vansittart did not realise that in the case concerned a sentence of two years' imprisonment could have been inflicted upon the guilty driver. It, therefore, appears that it is not so much the law that is at fault, but rather the matter of its application.

Before concluding this all too short synopsis on the activities of the negligent motorist, the author desires to make no apology if it is suggested that the theme of law enforcement has been unduly stressed. One cannot stand by indefinitely and watch slaughter committed without experiencing some desire to check the tragedy. After studying the methods favoured in recent years when the accent has been on the education of the road-user rather than the *punishment of the wrong-doer*, one may be justified in thinking that the time has arrived for more forceful action. It is now clear that a long period must elapse before engineering and town planning will achieve the segregation of the pedestrian from the motor vehicle. Until then our road traffic laws must be enforced, and the careless or dangerous driver should receive the attention he so richly deserves.

The Policeman in the Witness-Box

By Sergeant J. W. Allon
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In the Second Report of the Police Post-War Committee will be found these words: "*The work of the Police in bringing offenders to justice can be rendered ineffective through the faulty conduct of cases in court. . . . In addition to the question of efficiency we have also in mind the need, from the Police point of view, to maintain public confidence in the fairness with which the law is administered; the Police share in any general discredit which is brought on the law by an apparent defect in the conduct of a prosecution in court.*"

The Committee was, of course, considering the whole field of police prosecutions and was not primarily concerned with the actual giving of evidence, but if it is so important for court procedure to be strictly correct—and that is incontestable—it is surely of at least equal importance that the giving of the evidence should be carefully considered.

When a patrol constable makes an arrest or institutes process, the experience and authority of the station officer is available; if the case presents any unusual technical difficulties, scientific and legal assistance can be obtained; but when the evidence is finally given in court the constable stands alone. No matter how carefully the case has been prepared and how many eminent experts have been consulted and called to testify, the ultimate success of the case generally depends upon the more comprehensive evidence of the police officer in the case.

The modern policeman receives a fairly liberal vocational training. He is well schooled in his powers of arrest and general police law and procedure, but too often the duty of giving evidence is regarded as a formality to which he must gradually be accustomed. Frequently it

is not until he stumbles upon a difficult point at the Assizes or Court of Quarter Sessions that he realises that the giving of evidence is not merely the mechanical recitation of facts. This is not meant to imply that evidence is not important in the lower courts, but faults and irregularities there often go unchecked, and sometimes unrecognised.

It is not sufficiently appreciated that the manner in which evidence is given, the demeanour of the police witness, and the strict truthfulness and impartiality with which the evidence is given, are matters of the utmost importance as having a direct bearing on the respect with which the police are held by the court and the public. The British police system is founded on public confidence and goodwill; there are not many spheres of police activity where the system is so open to public appraisal and criticism.

What can the policeman in the witness-box do about it ?

Demeanour

" For a man by nothing is so well betrayed
as by his manners."—*Edmund Spenser.*

The first impression created by the police witness must be one of absolute sincerity. In many cases a doubt is aroused even before the evidence is given. The oath is taken at a breathless pace and utterly devoid of any significance or even meaning. The only punctuation is that provided by the slamming of the Testament back upon the ledge of the witness-box. The police witness, by reason of his experience of the oath, contributes to this bad impression. The ordinary witness, who has probably never given evidence before and has perforce to read it slowly from the card supplied, is thereby endowed unconsciously with an apparent sincerity lacking in the case of the experienced officer. On one occasion the writer remarked to a constable that he took the oath with commendable slowness, and was informed that the time spent on giving the oath was needed to prepare for the evidence to follow, and therefore the oath was taken as slowly as possible. It would appear that it is possible to make a virtue of necessity in this matter.

One of the first lessons a policeman learns is that of controlling his temper, but it is not unusual to find that the man who is perfectly good-natured when dealing with the general public or even unruly prisoners is unable to preserve his equanimity under the strain of cross-examination. This is partly due to the incisiveness and cunning of experienced counsel and partly to the constable's ignorance of the purpose of cross-examination. Sir Herbert Stephen's famous and rather severe advice was: " Never cross-examine unless you know," that is, know what answers you will receive. It is true that cross-examination can be perilous. It follows, therefore, that the policeman should answer briefly, and not embark on extraneous comments. It is generally only those which are likely to be fruitful to counsel.

Unfortunately, some solicitors and counsel act on the famous advice: "*If you cannot attack the case, attack the witness,*" and it is then that cross-examination can become offensive. Even so, the only safe course is to answer briefly and civilly; not only because it is expected of a police witness but because temper loosens the tongue, and counsel may gain by that means an object he would not have achieved by the most skilful cross-examination.

A tendency which has become noticeable in some courts is that of indicating by gestures those things which dare not be said. Lists of previous convictions are rustled ostentatiously and gestures of incredulity or despair are used at appropriate times to indicate a state of mind which the police think ought to be shared by the court. This dumb show and legal pantomime is a complete negation of the dignity and justice of the courts and ought to be suppressed by any officer concerned with police procedure. The same remarks apply to the constable who is facetious in his replies, or who joins in the laughter occasioned by a reply given by a witness. There are many superb examples of judicial humour, but a court of law is not the place for a policeman to show his appreciation of them.

Speech

"The only people I can ever hear in this court are police witnesses—they know how to speak up."—*Extract from a press report of a comment by a Chairman of Petty Sessions.*

Although it is true that it is rarely necessary for a policeman to be told to speak up, there are several faults to be noted in this aspect of the giving of evidence.

Many police witnesses gallop through their evidence with as much disregard of pauses as is physically possible. This is particularly noticeable in the younger men. It is a serious fault, because such a hurried recital is apt to be very unconvincing. It can also be dangerous. A formal statement which has been entirely committed to memory is at the mercy of that memory; once the thread of the story has been lost the evidence comes to a disconcertingly abrupt halt. The effect on the unfortunate witness needs no elaboration.

Conversely, the telling of the story in a straightforward and unrehearsed manner is more convincing, and if the narrator has to pause naturally in order to form his sentences, it gives the impression of a witness who is doing his best to be truthful and accurate.

Some few policemen have the Latin urge for gesticulation, which, if natural and kept within reasonable limits, will do no harm. It is, however, no part of a policeman's duty to emphasise or dramatise his evidence—"to gild refined gold, to paint the lily," as Shakespeare so eloquently puts it.

Perhaps it is a pity that elocution is not to be found in the syllabus of the recruit training schools, and that the policeman is given no guidance in the use of his voice except possibly on the parade ground. In some Forces it is the custom for "Reading Aloud" to be included in the promotion examination, and it is symptomatic that the examinees, far from attempting to prepare for that part of the examination, cannot even understand the significance of its inclusion.

Emphasis, pauses and inflection are alike lost upon the average constable, though many unconsciously make use of those aids to speech, and many more appreciate the effects of it when applied by an experienced counsel. A study of the proceedings in some of the notable trials of the past would exemplify, without the aid of text-books, the importance of elocution. A whole education on the subject is contained in the first dramatic question put by the Attorney-General to Seddon in his cross-examination: "Mr. Seddon, did you like Miss Barrow?" What a world of meaning was contained in that simple but momentous question, and it is said that this was the only occasion during the trial when Seddon lost his composure. What better time to effect this than at the beginning of the cross-examination?

Language

"What is there left without multilateralism or bilateralism, unless it is unilateralism?"—*The President of the Board of Trade, quoted in Hansard.*

Much has been written about the policeman's love of the time-hallowed word and the "old familiar phrase." Claud Mullins remarks that the policeman always proceeds but never goes; never finds anything but always ascertains it, and even the humble gap in the backyard fence becomes an aperture.

But is this peculiar to the Police?

The tendency to impose pretentious titles on simple things is shared by the Cabinet Minister quoted above and the Corporation dustman who recently startled one of His Majesty's Judges by referring to his dust-cart as a freighter. One can sympathise with the Irish publican who, when asked by a bank messenger for the whereabouts of one of their "officers," replied that the individual had just gone out with his sword behind his ear.

That the police officer should share in this tendency is not only natural but partially excusable, for he soon learns that caution is as necessary in speech as in action, and by clinging to those expressions which have stood the test of time he feels that he is less likely to fall into pitfalls which beset the unwary witness.

In his book, *Law and other Things*, Lord Macmillan quotes the case of a Scotch deed of settlement which was invalidated because of the inadvertent omission of the archaic word "dispone." Is it not natural that the policeman, having studied the vast accumulation of case law which has hinged on the interpretation of quite simple words, should be reluctant to depart from what he considers the correct formulae? Truly it can be said that the law sets a very poor example in such matters.

Nevertheless, if the quality of police evidence is to be improved, the policeman must temper this caution with a measure of enterprise and common sense. Police jargon, and indeed any technical or business jargon, is usually due to laziness or a faulty vocabulary. Only education and self-discipline can remove these faults. Now that recruits are being trained at District Training Schools, where the use of stereotyped and hackneyed phrases is discouraged, there is reason to believe that an improvement will be effected, and policemen will at long last "go to the place where a crime has been committed and find a gap in the fence."

Truthfulness

"Any of the police who wilfully depart from the truth are utterly unfit for the service."

Extract from Vincent's Police Code.

Few will disagree with the rather sweeping statement quoted above. It can safely be accepted that the fundamental virtue of all testimony is truth, but the inclusion of the "wilfully" seems to imply that absolute truth is difficult of attainment.

Accuracy in the witness-box depends mainly upon accuracy of observation and a capacity for clear thinking. Faulty observation is frequently due to confusion between cause and effect and between assumption and fact.

In Edgar Allan Poe's story *The Murders in the Rue Morgue* there is an excellent example of a false assumption when several independent witnesses genuinely mistake the chattering of monkeys for speech in a foreign tongue. It is said that the famous French criminologist Bertillon had the words, "*You only see what you look for, and you only look for what is already in your mind*" over the entrance to his lecture room. Every policeman knows of instances of this mingling of truth and imagination, and reports of trials provide many examples of muddled thinking. One of the best instances concerns an Irishman who received a violent blow on the head in the course of a street brawl. It was no doubt understandable that he was able to tell the court that the blow caused him to see "stars," but it must

have been rather disconcerting to his legal representative when the indignant Irishman solemnly told the court that he was able to identify his assailant by the light of those stars. Truth hath no greater enemy than its unwise defenders.

Another obstacle to truth in the witness-box is the cavalier way in which witnesses are apt to be treated. Although the interests of justice make cross-examination necessary, many witnesses are intimidated by the insistence on the evidence conforming to the strictly legal pattern, and no allowance is made for the witness's inexperience. "Answer yes or no," the witness will be told, and he flounders amidst his own unintentional contradictions in a desperate attempt to tell, in his own way, what he believes to be the truth. Even police officers are sometimes flustered when prevented from giving their evidence in the form or sequence which they have learned.

When Pilate asked his famous question, "What is truth," he did not appear to expect a reply and none is recorded, but the question was at least a straightforward one. There is a tendency to frame quite simple questions in the double negative, and one hears such complicated queries as, "Would it not be true to say that this was not unknown to you?", which leaves the unfortunate constable with a preliminary mental exercise in interpretation. Frequently he is unable to extricate himself from this verbal labyrinth and makes a contradictory or inaccurate answer. Alternatively, he may take so long over his deliberations that he appears to be evading the question or unwilling to answer it.

There are many ways in which court procedure could, with advantage, be simplified. The English legal machine is one of which the nation can justly be proud, but an occasional oiling would be in the interest of those who work it and those who are brought within its scope. It is half a century ago since Zola proclaimed that truth was on the march, and one may be permitted to wonder whether her progress through the law courts has been entirely unimpeded.

Impartiality

"The truth you speak doth lack some gentleness."—*Shakespeare.*

Most officers when giving evidence are careful to observe the elementary principles of honesty and truthfulness, but neither of these virtues is incompatible with impartiality. It is, indeed, possible for the evidence to be entirely truthful so far as it goes, and yet suffer from the sin of omission. It is possible for the testifying officer to be perfectly frank and honest in such evidence as he gives, and yet omit those things which—though not strictly necessary to prove his case—are vital if the court is to understand the full circumstances of the case.

For this reason impartiality is as essential as truthfulness—and more easily attainable. Cicero remarks that "falsehood is so near the truth that a wise man would do well not to trust himself on the narrow edge," but with impartiality there is no difficult narrow edge. It is primarily a question of personal honesty, fair play and common sense; all of which are virtues possessed by the average police officer.

And yet this charge of bias, so often levelled against the police, is one that cannot lightly be dismissed. Claud Mullins in his interesting book *Fifteen Years' Hard Labour* mentions that he has often been asked his opinion of the truthfulness of police evidence and states, "I have never even suspected that a police constable was deliberately lying to me." The word "deliberately" seems to qualify the statement. Could it be that Mr. Mullins had in mind the constable who, though telling the truth, was not telling the whole truth?

There are many who are in no doubt whatever on this question of prejudice. The strange anonymous booklet *How to Defend Yourself*, issued for the benefit of supposedly oppressed workers, betrays its warped outlook when it refers to police officers being sworn to "give evidence against you." This danger of bias was impliedly recognised when the words "against you" were deleted from the end of the formal caution, and again when the term "Police Court" was dropped.

There still remain two chief sources of bias; the fact that in a great many prosecutions the case is presented by an Inspector or Superintendent of Police, and the personal interest taken by the constable in securing a conviction.

It has been pointed out by many writers, including Mr. Leo Page in his *Justice of the Peace*, that when a police officer has gone through the procedure of detection, charging, and then bringing the offender before the court, it is somewhat unreasonable to expect him to dissociate himself from the result of the case. Naturally he desires a successful conclusion; his superior officer, who is probably conducting the case in court, shares this feeling. Consequently the constable giving evidence is tempted to overstate his case in order to secure a conviction, please his superior officer, and satisfy his own pride in a job well done.

The introduction of a prosecuting officer in all Forces would do much to eradicate at least some of this bias. Within limits, the constable's pride in the successful outcome of the case is a healthy one, but there is a manifest danger in stressing it. In spite of the obvious virtue in complete detachment, there are still Forces which place too much importance on the number of cases which a young constable has obtained, and encourage him to "put in an appearance at court." A reliance on such a superficial assessment implies a lack of judgment and discrimination, but the evil does not stop there. Although it may not be intended, the result is that the constable forms the opinion that court appearances are vital to his progress. From there it is but a short step to assessing not only the number of appearances but the results obtained therefrom. The vicious circle is therefore completed, and impartiality is in danger of being sacrificed to purely mechanical methods of assessing ability.

Refreshing the Memory

"Memory, the warder of the brain."
—*Shakespeare.*

The author of an article in the *Justice of the Peace and Local Government Review* professed sympathy for a prisoner at Bow Street who remarked that whilst he had to rely for his defence on his recollection of events of the previous evening, the police officer was allowed to read out his evidence from a notebook. No doubt the officer's reply would be that he had to remember the facts of several such episodes, including all relevant details, whereas the prisoner presumably was involved in only one brush with the law and should be able to recount his experience without undue strain on his memory.

It must be admitted, however, that this question of refreshing the memory is not an easy one. Evidence given from memory creates a much better impression; it has a more convincing ring; and the self-discipline of learning the evidence makes the officer more self-reliant and confident.

Are we, then, to condemn the use of the pocket book in court?

There are some cogent arguments against any such sweeping prohibition. There are, for example, those cases in which, because of their complexity, the pocket book must be consulted if accuracy is not to be sacrificed to more formality. Then there are those instances, which occur most frequently in serious crimes, where a reply of vital importance is made by the accused and the exact words of it must be quoted. Any misstatement of such a reply would provide an obvious opening for the defence. Finally, there is the indisputable fact that the production of the notebook can strengthen the evidence in important cases. It can be a gesture of confidence; it is as though one said, "The words are here in black and white, and I defy the defence to risk underlining the strength of the prosecution's case by demanding the production of this book."

Legally, it is quite permissible for a witness to refresh his memory from notes, if they were made at, or soon after, the occurrence to which they relate. The notes of a police officer should, of course, come within that category. In *Hinshelwood* v. *Auld* (1925, *S.L.T.* 647) it was held that if a police officer gives evidence without referring to his notes the defence cannot call for their production. In *Brooks* v.

Prescott (1948, 1 *All E.R* 907) the defence sought an Order for the production of a police notebook, but the Court refused to grant it as a result of the police entering an affidavit that the evidence related solely to their own case.

The inescapable conclusion is that although it is generally preferable that evidence should be given without the aid of the notebook, there should be no reluctance to produce it if required in the interest of accuracy or even of expediency.

> "Truth is the summit of being; justice is the application of it to others."—*Emerson.*

Down the centuries man has striven for the twin ideals of truth and justice. In many spheres of human activity progress has been slow, but in the English legal system the national sense of justice and fair play has come to full maturity, and it can be said that in our judicial and penal systems at least, we have almost refuted the theory of "man's inhumanity to man."

Is it an exaggeration to claim that the constable giving evidence is a symbol of progress? Perhaps the analogy is not as strained as it may appear, for laws are dependent for their success as much on the way they are enforced as the way in which they are framed. The English police system is in turn dependent on the trust reposed in it by the public, and the constable giving evidence can be regarded as the outward symbol of the relations between the judicature on the one hand and the *public* on the other. On him depends the truthful, honest and impartial presentation of the facts of a case which very probably affects individual liberty, and certainly affects the esteem in which the entire system is held by those on whose goodwill it depends.

If it is agreed that Emerson was right in defining justice as the application of truth to others, then it must follow that the constable assumes a supremely important obligation when he swears to "tell the truth, the whole truth, *and nothing but the truth*."

A Police Juvenile Aid Bureau

By Detective Officer TOM S. BROOMHEAD
Derbyshire Constabulary

DURING the War years, when the whole of the National effort was directed to one end, it was assumed that the alarming increase in juvenile crime then experienced was due to exigencies of war, and that in post-war years, as the country returned to normal, there would be a corresponding decline in juvenile delinquency.

This anticipated reduction in juvenile delinquency has not been

fulfilled, in fact the figures for 1948 considerably exceed those of 1947 as the following tables show:

Boys and girls found guilty of indictable offences in England and Wales and dealt with in the Magistrates' Courts

	Under 14	14-17
1947	21,152	13,861
1948	26,715	16,991
Increase in 1948	5,563	3,130
	26 per cent.	23 per cent.

The following provisional figures show the number of children and young persons found guilty of non-indictable offences at Magistrates' Courts during 1948

	Under 14	14-17
1947	8,155	14,212
1948	11,118	16,317
Increase in 1948	2,963	2,105
	36 per cent.	15 per cent.

Delinquency statistics for Scotland show that in the 8-16 age-group nearly 20,000 were proceeded against in the Courts. For "crime" the peak age is given as 13 years and for "offences," such as breaking bye-laws and playing football in the street, 16 years. The age at which vandalism was rampant is given as low as 10 years.

Authoritative opinion is agreed that the basic causes of juvenile delinquency are the changing and weakening of the moral standards of this century; bad housing; lack of parental supervision and interest; broken homes. It is certain that our present social structure is not as firmly founded on the family as in previous generations.

Opinion at a Home Office conference in March 1949 was that juvenile delinquency could not be treated as an isolated problem, nor would its eradication be either speedy or simple.

In the Home Office Memorandum* from which statistics have already been quoted it is suggested that representatives be nominated from education committees, teachers, local youth employment committees and youth employment officers, local youth committees and youth leaders, children's committees and children's officers, probation officers, police and voluntary bodies, to meet at regular intervals and act as a clearing house of practical experience and local knowledge and to encourage the services concerned to institute necessary executive action.

Such a committee might be effective, but in the place of untried experiments I think that a solution which has stood the test of time may be preferable.

New York, faced with serious juvenile crime, tackled the problem rather differently. Twenty years ago, conforming with the recommendations of an Advisory Committee on Crime Prevention, a Juvenile Aid Bureau was established.

Mr. James B. Nolan, Deputy Commissioner of the New York City Police, has prepared a brochure entitled *Establishment of a Youth Bureau*, outlining the organisation which has functioned successfully since 1930. He says " . . . police departments have traditionally been considered repressive agencies concerned only in the enforcement of law and the apprehension of criminals. During the past twenty years or more, however, we find police departments have come to appreciate a need to understand and protect youth; this opportunity to help youth should no longer be left to chance and should become an organized part of Police work in every community." By this precept the Bureau works.

Members of Mr. Nolan's department have been allotted the task of obtaining the co-operation of Churches, Schools, Social Agencies, etc. The Uniform Patrol Branch brings to the notice of the Juvenile Aid Bureau the case of the boy or girl under 21 years whose activities are delinquent. The case is then investigated by the Juvenile Aid Bureau in order to ascertain the extent of the problem in the light of a complete and accepted social adjustment, and if the case is referred to one of the social services, stress is made that such services should advise the Juvenile Aid Bureau of the response of the individual to the treatment being given. An important fact is that the Youth Bureau should at all times be an advisory agency.

Police officers (both sexes) who are assigned to the Juvenile Aid Bureau carry out this work as part of their duty. Regarding the selection of a Director for a Juvenile Aid Bureau (*from within the Police Service*) Mr. Nolan says that careful consideration should be given not only to the academic background but, even more important, to the interest and adaptability of the individual to this type of work.

Here surely we have the answer to the queries raised by the Home Office Memorandum ; † " . . . is there adequate co-operation between all who are concerned with the welfare of parents and children and the prevention of juvenile delinquency, *e.g.* education, health, and children's authorities, police, teachers, attendance officers, probation officers, social workers, marriage guidance centres, the churches, employers, etc. ?

" Would it be a help if the local authority designated an officer as a clearing house for information and inquiries and to co-ordinate action where appropriate, particularly action to improve unsatisfactory home conditions where children are neglected or in danger of being neglected ? "

When the social history of this century is written the year 1861 will be eclipsed by the year 1948, for in the year 1948 four Acts came into being : The Children Act, The Criminal Justice Act, The National Health Act and The National Assistance Act. No tears will be shed over the passing of the Poor Law by the Children Act which, as its full title shows, is: " an Act to make further provision for the care or welfare, up to the age of 18 and, in certain cases, for further periods, of boys and girls when they are without parents or have been lost or abandoned by, or are living away from, their parents, or when their parents are unfit or unable to take care of them, and in certain other circumstances."

As Colonel E. Eton concludes in his introductory to Mr. A. C. L. Morrison's book,‡ *The Children Act* 1948, " . . . co-operation will be essential between all parties in any way concerned in achieving the only objective, the welfare of the child. The welfare of a child is indivisible."

Our twentieth century civilisation has provided everything to cover man's physical well-being, but this is useless if there is no such corresponding advancement in his moral, spiritual, and social activities. We as police officers must not say " we have also played our part in the protection of society; the finger-print system, wireless, forensic laboratories, advanced photography, ultra-violet and infra-red apparatus."

What more can we do ? It is my belief that a Police Juvenile Aid Bureau could be established in this country, probably on the lines of the Juvenile Aid Bureau run by the Police Department of New York City. The Bureau would have certain well defined objectives, including bringing about a change in the behaviour of the juvenile delinquent who comes to the notice of the Police, and finding and removing conditions making for delinquency; for the Bureau would fully recognise the need of the assistance of all social organizations in procuring a satisfactory adjustment of the wayward boy or girl.

As I have said, the uniformed police officer would be the main source of information. He would carry a form (what, another one!) to identify the individual, the nature of the activity complained of, the circumstances surrounding it, etc. This would be transmitted to the Juvenile Aid Bureau, which would then investigate the case and determine the action to be taken, whether advice should be given to the individual and parents or, when there is need for social adjustment, whether one of the social agencies such as the Youth Clubs, the Scout Movement, Cadet Force and other welfare agencies, should be called in to help.

At all times the Police Juvenile Aid Bureau should be an advisory agency and not undertake the actual social treatment where such a case can be referred to the service or agency equipped for the type of work suggested.

Obviously case work would necessitate much work with parents as well as children; and what body or service is more closely associated with parents and children for twenty-four hours of the day and every day of the year than the Police Service?

Therefore I am convinced that a Police Juvenile Aid Bureau could handle cases that required opportunities for social adjustment, court action to be taken only when necessary.

There is an excellent paragraph on 'Character' in the pamphlet *Citizens Growing Up* §; "... it is not only violence and crime that make bad citizenship. So do greed and sloth. So do cowardice and cruelty, self-righteousness and the wrong kind of pride."

There will be folk who will say that a Police Juvenile Aid Bureau would not bring about the desired social change to help boys and girls become good men and women. There is, of course, the legal position of the potential delinquent to be considered, the power of coercion; for when a juvenile has committed a crime and a charge has been preferred nothing may be suggested as to the juvenile's future welfare except by the magistrates after the case is proved.

There will be many who will ask, "Then how exactly does the Police Juvenile Aid Bureau function?"

The present law would require amending so that cases would have to be referred to the Juvenile Aid Bureau and court action taken only when serious offences have been committed; or after having exhausted every avenue of treatment it is deemed that such action is best for the juvenile and best for society.

In addition there is the problem of man-power; but surely a Juvenile Aid Bureau would aid wayward juveniles to become normal citizens instead of beings who are fighting against isolation and disorder.

REFERENCES

* *Memorandum on Juvenile Delinquency*. Issued jointly by the Home Office and Ministry of Education. 1949. Paragraphs 2 and 4. Paragraph 10.

† *Memorandum on Juvenile Delinquency*. Issued jointly by the Home Office and Ministry of Education. 1949. Paragraph 12.

‡ Mr. A. C. L. Morrison's *The Children Act*, 1948, and *The Nurseries & Child-Minders Regulation Act*, 1948.

§ Ministry of Education pamphlet No. 16, *Citizens Growing Up*. Part 1 (2) page 7.

Concerning Sudden Death

By Constable WILLIAM WOOD
Kent County Constabulary

ALL police officers, in uniform or otherwise, are liable to act in the capacity of Coroner's Officer, and should know their duty with regard to sudden death. It is a duty which may have to be taken any day, at any hour, and mostly unaccompanied.

The Coroners Act, 1887, s. 3, states that where a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or unnatural death, or has died a sudden death of which the cause is unknown, or that such a person has died in prison or in such place or under such circumstances as to require an inquest in pursuance of any Act, the coroner, whether the cause of death arose within his jurisdiction or not, shall, as soon as practicable, arrange for an inquest to be held. By the Act of 1926, the coroner was empowered to order a post-mortem examination on a body "where there is reasonable cause to suppose that a person has died from natural causes, and if, as a result of such examination, he is satisfied that an inquest is unnecessary, he may dispense with an inquest."

In connection with the latter, a form widely used in this country by officers reporting sudden death, where only simple enquiries have been necessary, is the "Probable Cause of Death" or "Satis" form, and in suitable cases the doctor is asked to sign that 'I have seen the body of ...., of ...... (address) ......, who died on ...., aged ...., and as a result of my examination and of my previous knowledge of the deceased, I am satisfied that death was due to natural causes, namely ...., and I am willing to certify accordingly.' This form will be forwarded to the coroner with the Death Report.

Experience has shown that there is a very fine line of demarcation between suicide and accidental death. This is a danger to be watched by the young recruit and Special Constable, for it is quite easy to overstep this line on either side in the investigation of a sudden death. As in the investigation of a crime, the surroundings at the scene of a death will show much to an observant mind; but in the case of deaths, they may show only that which the person who died wished the finder to discover after his death. On the other hand, the evidence as first seen may point directly to suicidal tendencies on the part of the deceased person. Perhaps the following will illustrate these points. There is the case of the young farmer, afterwards proved to have been in financial difficulties, who decided to commit suicide shortly after increasing the insurance on his life. He arranged the case to look like an accident. He told his family and servants that he was going rabbit shooting, and on some rough ground he was found with his head half blown off. If it had not been for the local postman cycling along a nearby road, who actually saw the incident, it is quite possible that 'accidental death' might have been recorded at the inquest. The man had actually used a small stick with a thumb fork in one end and held the shotgun away from him at a distance of nearly a yard. There were plenty of sticks on the ground near the scene, and this particular stick could have been overlooked. Then there is the classical example of the supposed suicide the man who being ill takes a fatal dose of poison apparently to end his life as he could 'stick it no longer.' Investigation showed that the man, being in great pain, arose from his bed during the night in the dark, to get his medicine, as was his usual practice when the 'bouts' came on. Unfortunately he took down the wrong bottle left on the same shelf as his medicine.

In all cases where there is the slightest doubt in the mind of the officer on the enquiry that it could be a case of suicide, accident, or even murder, he should carry out his enquiries to the full, and in the case of the latter inform his superior officers immediately. Information will have to be provided as to where the bottle of poison came from, how long has it been in the position it was found or was before the deceased person found it, where the gun was usually kept, was there easy access to it, was fresh ammunition obtained recently, was deceased seen to handle the gun recently. Possession should be taken of all material evidence for production at an inquest, and in the case of firearms, the ammunition will be compared with that extracted in the post mortem. The state of the person's mind at the time is vital evidence, and every effort must be made to show it if possible. A search of the premises for any letter left behind may prove this line of investigation, and whilst on this point it cannot be stressed too strongly that it is also necessary to search for valuable property, if the person resided alone prior to death. The writer recalls a case where £200 in notes was found under the mattress of his bed after the man had committed suicide by hanging himself downstairs. In another case an old lady died suddenly, apparently in poverty; but in the hem of her black cotton dress she had stitched-in dozens of £1 notes. It may not seem an important point but it is a duty of the Police to hand such property over to a responsible relative or the coroner (if there are no relatives) for disposal by him.

First examination of the body should be made with a view to detecting any signs of life, and if there is the slightest hope, even though the heart may have stopped, artificial respiration should be commenced without delay and kept on until the arrival of a doctor or the patient has been accepted into medical care at the hospital. When it is obvious

that death has taken place and that life is beyond recall, then the officer should examine the noticeable signs to see that they are consistent with the surrounding evidence, taking special note of injuries which could not have contributed normally to the death, e.g. facial injuries to a person *found dead in a bath*. In the evidence to the coroner he must show the apparent cause of these injuries, however trivial they may seem.

In the case of suicides it must also be remembered that if a person killed himself in a manner which in the case of another person would amount to murder, he is guilty of murder, and every person who aids and abets any person in so killing himself is an accessory before the fact or a principal in the second degree in such murder (Accessories and Abettors Act, 1861).

There are other offences which can be committed in connection with persons dying. Eveyone commits a misdemeanour who prevents the burial of any dead body, or who, without authority, disinters a dead body, or who having the means neglects to bury a dead body which he is legally bound to bury, provided that no one is legally bound to incur a debt for such a purpose (for persons who are unable to afford the cost of the burial the Area Assistance Officer will make the necessary arrangements when notified), or who buries or otherwise disposes of any dead body on which an inquest ought to have been held, without giving notice to the coroner; or who, having a legal duty to do so, fails to give notice to the coroner that a body on which an inquest ought to be held, is lying unburied, before such body is putrefied.

In all Counties and County Borough Police Areas special forms have been issued in conjunction with the coroner for reporting sudden deaths. There are set questions, and although the questions and the sequence may vary in different localities, in general the gist is the same. It is up to each officer to make himself familiar with them before he visits the scene of an enquiry. Briefly they are as follows:

(1) Full name of the deceased person—*correct spelling*, and any alias.

(2) Full address, temporary and home address to be given.

(3) National Registration Number (Card and Ration Book produced).

(4) Age and sex (date of birth from certificate, if possible).

(5) Married or single—marriage certificate to be seen, if possible.

(6) Occupation—this must be given exactly, as it is most essential *in industrial deaths; if retired, the former occupation to be given.*

(7) Nearest relative—occupation of same.

(8) Date and place of death—exact Parish to be given, if possible.

(9) Was anyone present—if so, who.

(10) Who last saw the body where it was found—how long apparently dead.

(11) Names of witnesses.
(12) Deceased's state of mind—in cases of suicide.
(13) Place where the body lies (give Parish).
(14) Place available for holding inquest if necessary.
(15) Name and address of Registrar.
(16) Name of Coroner's Officer or officer acting in that capacity.
(17) Particulars of Life Insurance in cases of suicides and children.
(18) Negligence—on the part of whom.
(19) Name and address of doctor who has attended the body.
(20) Supposed cause of death.
(21) Is there any intention of cremation or moving the body out of England.

After these questions a report by the officer will follow, giving the details surrounding the death, together with any statements of witnesses, the usual practice being for the witnesses to sign their respective statements in the presence of the coroner.

The inquest will be held as near to the scene of death as practicable, that is so far as accommodation is concerned, and it is the duty of acting coroner's officers to make the necessary arrangements for the coroner and the jury to see the body (if necessary). I understand that it was the rule in ancient times to sit in full view of the bodies when an inquest was held. This must often have been more of an ordeal than was sitting in the stocks, for the want of hygiene in those days is well known, and what effect it had on the proceedings one can hardly fail to see. Nowadays the coroner may call upon the jury to view the body, but even this is very rare. The coroner then conducts his court with the assistance of the officer in the case, who will usher in the witnesses, instructing them how to take the oath and where to sign their statement at the appropriate time. In cases where the coroner deems it necessary, the officer will have already summoned a jury to attend and will present the coroner with a list showing the foreman of the jury. The jury will then be 'sworn-in,' and this can be done either singly or in a batch. It may be that more evidence will be divulged at the inquest than was given to the officer taking the statements. This will be added to the statements, and the witness will sign the full statement. The officer's statement will probably be given at this stage. Having heard all the evidence, the coroner will give his verdict, and a true record of this should be made by the officer who, after the proceedings, will submit his report to his superior, and this, if there are no criminal proceedings pending, will conclude the case.

Of all the delicate, humane jobs which falls to the lot of the police officer, this is surely the one which calls for the most tact.

Reviews

PERSONAL DESCRIPTIONS. Superintendent A. L. Allen, Metropolitan Police *Butterworth & Co.* (Publishers) Ltd. 7s. 6d.

The value of personal descriptions for identifying persons in custody diminished with the introduction of a simple method of classifying finger impressions. There are however, in police work still many uses for such descriptions, particularly that o enabling a detective to pick out his man from a crowd. Unfortunately, many of the recorded descriptions on which such officers work have been obtained from witnesses who have not been trained to observe and are often quite unreliable. Every police officer has had some experience of taking a description from a witness and has been struck by the lack of knowledge displayed. This is not so surprising when the person being described has been seen for a fleeting moment, but when it is the description of a relative, the patience of the investigating officer is often stretched to the limit. Such officers would be well advised to put themselves to the test. Can they write a really worth-while and reliable description of the people they know? And can they discriminate between that which is worth recording and that which is not? If not, then they would be well advised to expend a modest sum and secure Mr. Allen's book. In addition to indicating how they can become expert in this matter, thus becoming more efficient in their job, they will, as the author states, find much pleasure in the practice of their powers of observation. The book is, happily, dedicated to police instructors, but it should have a much wider range of readers than this implies.

POLICE LAW. By Cecil C. H. Moriarty, C.B.E., LL.D. 10th Edition. Butterworth and Co. (Publishers) Ltd. Price 10s.

The writer of a standard legal text book is kept fully occupied in these days by the many changes in the law which are constantly occurring. The tenth edition of Dr. Moriarty's famous work is, as a result, the richer by twenty-seven new subjects, and there are references to thirty-seven additional statutes. Most important of these, from the point of view of the police, is the Criminal Justice Act, 1948, the provisions of which are keyed into the text in the sections to which they are appropriate. So far as can be ascertained nothing of importance has been omitted and the new provisions are accurately set out. The general arrangement of the work follows the pattern of previous editions and will be familiar to those who are accustomed to using it. The new "Moriarty" is worthy of its great reputation and is well worth the higher price of 10s.

ARCHBOLD'S CRIMINAL PLEADING EVIDENCE AND PRACTICE. By Butler and Garsia. 32nd Edition. Sweet & Maxwell Ltd. Stevens & Sons Ltd. Price £4 4s.

The coming into force of the Criminal Justice Act, 1948, was a landmark in our criminal history which affected all those in any way concerned with the administration of justice. In addition, it made urgent the publication of this edition owing to the vast changes introduced in criminal procedure and practice, and those members of the Police Force who need an up-to-date and accurate guide in connection with their duties in all Criminal Courts need seek no further than this.

The Editors have introduced into the text in an admirable manner all the changes in law and procedure which have been made and have wisely relegated to an Appendix the Administrative matters where those who need these provisions will readily find them. The Index is a good one and cases on criminal law have been noted in the appropriate places. Of special interest to Police Officers will be Section 21 of the Criminal Justice Act 1948 which deals with the powers relating to persistent offenders; this and other sections relating to the proof of previous convictions by finger-prints, evidence by certificate are all included in this edition.

Of particular assistance to Justices and their Clerks is a useful table of penalties which has been provided in loose form. Police, practitioners and Justices' Clerks will find this edition retains the high standard of previous editions.

The Colonial Police

The following appointments are announced by the Colonial Office:

Birch, V. P., Assistant Superintendent of Police, Nigeria.	Assistant Superintendent of Police, Cyprus.
Carbonnel, W. L. R., Assistant Superintendent of Police, Malayan Police Service.	Superintendent of Police, Malayan Police Service.
Catling, R. C., Superintendent of Police, Malayan Police Service.	Assistant Commissioner of Police, Malayan Police Service.
Chatterton, D. B., Assistant Auditor, Gold Coast.	Assistant Superintendent of Police, Nigeria.
Cullen, L. D. E., Assistant Superintendent of Police, Malayan Police Service.	Superintendent of Police, Malayan Police Service.
Dobree, C. T. W., Superintendent of Police, Malayan Police Service.	Assistant Commissioner of Police, Malayan Police Service.
Foley, T. J., Deputy Superintendent of Police, St. Lucia.	Senior Assistant Superintendent of Police, Jamaica.
Ford, O. J. M., Assistant Superintendent of Police, Mauritius.	Assistant Superintendent of Police, Nigeria.
Grant, E., Police Sergeant-Major, Barbados.	Superintendent of Police, Barbados.
Gaffikin, T. Q., Superintendent of Police, Malayan Police Service.	Assistant Commissioner of Police, Malayan Police Service.
Halse, E. H., Deputy Commissioner of Police, Somaliland Protectorate.	Commissioner of Police, Somaliland Protectorate.
Mathias, C. A., Senior Superintendent of Police, Uganda.	Assistant Commissioner of Police, Uganda.
Meehan, P. J., Superintendent of Police, Malayan Police Service.	Assistant Commissioner of Police, Malayan Police Service.
Meikle, G., Superintendent of Police, Cyprus.	Constabulary Officer, Sarawak.
Ranoe, G. H., Deputy Commissioner of Police, Bahamas.	Commissioner of Police, Bahamas.
Slater, A. J. W., Assistant Superintendent of Police, Malayan Police Service.	Superintendent of Police, Malayan Police Service.
Smith, E. H., Deputy Commissioner of Police, Gibraltar.	Superintendent of Police, Tanganyika.

THE POLICE JOURNAL

VOL. XXIII, No. 4 OCTOBER-DECEMBER, 1950

Quarterly Commentary

INCENTIVES

IT has been said many times that the best recruiting agent for the Police could be the man who is actually doing the job on the beat: it is certain that he could be the most effective means of deterring a young man from joining. It is not easy to analyse the reasons which prompt men to select the Police Service as a career; indeed, this probably applies in general to any walk of life. In many cases the smallest of things has been the deciding factor. We hazard a guess that many policemen owe their present position to some trivial incident, long since forgotten, which started a train of thought and action resulting in their presenting themselves as candidates for the Force. A remark casually directed to them in their youth—" You are a fine upstanding young fellow, big enough to be a policeman" ; accidental presence at a street accident when the policeman in charge called on them to render him some small help, and in thanking them said, " You did that well, as well as I could have done it myself," may have given rise to the thought " Why shouldn't I be a policeman anyway ? " The idea having taken root, the rest is not difficult to envisage. There might be some temporary unimportant dissatisfaction with the present job ; there might be a sudden awakening to the fact that the present job is likely to lead to a dead end. The unsettled state of mind would create an urge for a change ; how best to set about it ? Most men have little conception of what life in the Police Service entails. Some extraordinary ideas have been put forward under the hackneyed title of the essay recruits are asked to write, " Why I want to become a Policeman." A young man in this state of mind should, in these days, call at the local Labour Exchange or a police station and ask for the official pamphlet which sets out details of the job in clear if uninspired language. What he actually does is to make an opening with the policeman on the beat and pump him, usually without disclosing what he has in mind. It is at this stage that the serving policeman can help or hinder. We appreciate that in most walks of life the other man's job seems better than one's own, but in present conditions, when it is urgent that recruits are obtained, the moment is one of some responsibility for the police officer concerned. The opinion he expresses will carry much weight with the young man who is on the verge of making a decision which will influence the rest of his life. Policemen are notorious for leg-pulling, and whilst this is all good fun in the parade room with other seasoned men, a word amiss in the circumstances under review might well be a great disservice to the Force. The position assumes even greater importance when the officer approached happens to be on duty at the police station to which the would-be recruit has made a hesitant but official call.

We suggest individual policemen could, and should, go much further than merely giving the appropriate answers when they are approached. It is to the personal advantage of every serving officer, as well as to the Service, that the Force should be up to authorised strength. Likely young men should be approached and the idea of a police career implanted in their minds. In some cases the idea would take root and a good candidate to the Force would result. Chief Constables have long since appreciated this possibility and have taken appropriate steps to encourage such a procedure. Generally, however, the Police are not good publicists and it is not sufficient that now and then the Press records that some foreign visitor has said, "Your police are wonderful." The Commissioner of the Metropolis has gone much further than—as far as we know—anyone else has along this path hitherto; he has introduced "incentives." Whether other Chief Constables will follow will depend on the local need for recruits and the success or failure of the scheme in London. Presumably most of the recruits to the London force come from the provinces but at the time of writing we are not clear whether the 30s. per head applies to any policeman or special or whether it is restricted to Metropolitan officers. We, quite frankly, do not like the idea any more than the Force seems to like it, judging by the criticisms which have appeared. We think there is much value in the general idea that the police officer should be a recruiting agent, but to be of real value the part he plays must be wholly spontaneous and he must not be unduly spurred on to the work, not even by financial incentives which now appear for the first time. It might be that drastic diseases require drastic remedies, but it is of importance that only the very best and the fittest are admitted to the Service, and there should be some sense of vocation on the part of the applicant, who should not be over-persuaded.

Visitors from Overseas

The report of H.M. Inspectors of Constabulary for 1949 made favourable comment on the advantage which is being taken, at an increasing rate, of the facilities at the Police College for the training of officers from overseas forces. The report states:

"This widening of the scope of the College is welcome and has two-fold advantages. Firstly, officers from the overseas forces of the Commonwealth and Empire will contribute points of view and types of police experience which will add greatly to the interest and broadening effect of the College courses on students drawn from the home Police Service. On the other hand, the latter in their association with their colleagues from overseas will be able to speak of the latest developments in the organisation and methods of working of the traditional British system at home."

In addition to the students attending the College courses, a number of officers from overseas forces within the Commonwealth and from foreign forces are visiting individual forces here and, during a short period of attachment, are absorbing something of our system. These visits are proving of great interest and are no doubt of considerable value to all concerned. It is important, however, that too much be not expected of them. The students stay at the College for a reasonable period and the instruction there is carefully planned. The atmosphere of the College, however, is not exactly that of a police station, and the visiting student would be wrong if he conveyed that thought to his colleagues on return to his native force. Visits to police forces, unconnected with the College course, are usually very brief, and those forces which have experienced them get the impression at the time of the visitor's departure that he has attempted to cram too much into the few hours, or days, of his contact with a system which generally is basically very different from that to which he is accustomed. The language difficulty is sometimes a very real one, particularly in coloured visitors. It is quite disconcerting to a British officer, who has given more of his valuable time than he can well afford, to find on posing a few discreet questions to his colleague from distant lands that he has fully absorbed some quite trivial detail of the system but the main principles have passed over his head, being apparently wholly beyond his comprehension. However, the scheme is sound, and if the detail understood and retained is not impressive in scope, something of the spirit must be absorbed and be of real value. The idea may be extended in the future and it may be recognised that officers from home forces would benefit by visits to selected forces abroad. The British police system is without equal but this does not imply that there is nothing to be learnt from some of the others.

Service Commitments

The majority of recruits to the force now returning from the training centres are men who have undergone a period of training with the Armed Forces under the National Service Scheme. The experience gained during such training will be of value to them in the Force but it will be necessary to watch the position with great care. Any future war in which the world is involved will impose an even greater strain on the resources of the Police than the past war has done. Each successive war makes it clear that the issue depends on the vigour with which it is fought and on the maintenance of the will to win. High tributes were paid to the Police for their contribution to the maintenance of civilian morale during the last war, when, for the first time in modern history, battles were fought on our soil. In any future war the test will be even more severe, for modern methods of destruction are capable of operating at great distances and a new phrase "mass destruction" has been imported into the vocabulary of belligerent nations.

It will be imperative that the nation's manpower is used to the utmost advantage. In the first world war police forces were rapidly depleted by active, experienced officers being allowed to volunteer in large numbers for service with any of the fighting services. In the second world war this exodus was controlled and policemen were permitted, in less but still substantial numbers, to transfer to the most strenuous and dangerous branches of the fighting forces. A fair number of these men who returned have reserve commitments and will be anxious to take them up should an emergency arise. Others have undergone training with the Auxiliary Services in peace time, and now practically all future entrants will have territorial or similar responsibilities. These men will presumably be absent from their forces for regular periods of training with the units of which they are members. We appreciate that this applies to all branches of the community but the position in the Police is more urgent and compelling than in most professions, for the very life of the nation depends, in no small measure, on an effective and sufficient Force remaining available during the early stages of a national emergency to deal effectively with the public, and in a considerable degree, to control and co-ordinate the work of Civil Defence. We have no doubt that those responsible at the highest level are fully alive to the situation and are taking it into account in their planning.

The Police and the Law

Suspected Persons Loitering with Intent to Commit a Felony

THE true construction and application of the Vagrancy Act of 1824 has given rise to a series of cases, the latest of which is *Pyburn* v. *Hudson* (1950, 1 *All E.R.* 1006). One especially, *Ledwith* v. *Roberts*, has caused a great deal of difficulty to the Police, as the Lord Chief Justice said in giving judgment in the latest case. He expressed the hope that some day it would be dealt with by legislation and continued

as follows : "That case laid down that to come within section 4 of the Act a person must be within the category of suspected persons before he does the act which immediately causes his arrest. I should be sorry to attempt to lay down that the acts which cause him to be a suspected person and the act which causes him to be arrested must be separated by any particular length of time. There have been many cases in which the Police have watched men who have gone round visiting car parks or cars left unattended in the street with the object either of driving away a car without the consent of the owner or of helping themselves to property in the cars. If they have acted thus for a length of time, or in such a way that the court thinks that they have by their conduct brought themselves within the category of suspected persons, it matters not whether their acts have been done a quarter of an hour, or half an hour, or, I would say, even five minutes before another act takes place which causes the constable to arrest them. But there must be some act bringing a man within the category of a suspected person, and that act must have occurred before he commits the act which causes the arrest. That seems to be the effect of *Ledwith* v. *Roberts*, although that case is sometimes believed to have gone beyond that which this court has laid down it has decided."

It is evident from this statement of the principle by the Lord Chief Justice that the facts of any particular case must be carefully examined to see which side of the line it falls. The facts in *Pyburn* v. *Hudson* were these. At five minutes past midnight a police constable observed the respondent looking, apparently with interest, at the back of a place called Jopling's Stores. The appellant, a police constable, saw the respondent going round to the back of the premises, and followed him, but he lost sight of him. Shortly afterwards he found the respondent, whom he obviously suspected of being up to no good, up some scaffolding which would have enabled him (the respondent) to break into the place, which hitherto he had been observing from the back. The appellant thereupon arrested him. At the time he was arrested, the respondent was only a trespasser on the scaffolding; he had not attempted to break in. He was accordingly charged with being a suspected person loitering with intent to commit a felony. The respondent admitted that he intended to commit a felony, and said that the reason why he was on the scaffolding was that he was going to break in if he could.

It would be arguable, and the justices might have found, that the interest which the respondent was displaying five minutes past midnight in the back of the stores was enough to bring him within the category of suspected persons, that is to say, that a reasonable person, seeing him doing that, would think that he was there for a suspicious purpose, and that, as he was not arrested until he had climbed up the scaffolding and was found thereon, the offence was complete. The justices, however, found that the fact that he was taking an interest in the back of the premises at the time mentioned was not enough to bring him within the category of suspected person. The Lord Chief Justice and the rest of the Divisional Court could not say that the justices were necessarily wrong in that. According to the Lord Chief Justice they may have reasoned thus: "Here is a young fellow going home at night, and the fact that he looks up at the back of Jopling's Stores—perhaps in the hope that he may one day have enough money to buy his girl a present, is not enough to make him a suspected person. It is true that he was a suspected person as soon as he was found swarming up the scaffolding with the idea of getting in. True, he would have been guilty of attempted felony if he had started to open the window, but we cannot say that at the time he got up the scaffolding he was a suspected person." It is a question of degree. The justices, who obviously applied their minds carefully to the facts of the case and showed by their findings that they appreciated what it was necessary for them to find, stated that "the act of the respondent at the rear of the premises was not of such a nature as to bring him within the category of a suspected person." The Divisional Court could find no fault with the conclusion to which the justices came and therefore the appeal of the police constable was dismissed.

Recent Judicial Decisions

Use of Speedometers as Evidence of Excessive Speed

Nicholas v. *Penny*

THE important decision of the High Court in *Nicholas* v. *Penny* (66 *T.L.R.* 1122) will probably have the effect of making it easier in practice to prove speeding offences on the highway than it has been up till now, at least in recent years. Section 2 (3) of the Road Traffic Act, 1934, provides that a person shall not be convicted of exceeding a speed-limit "solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was driving the vehicle at a speed exceeding that limit." The practical problem often is to know the extent or the manner in which a speedometer or a stop-watch can be used as corroborative evidence for the purposes of the section.

The facts in *Nicholas* v. *Penny* were that a police constable gave evidence that he drove a police car at an even distance behind the defendant's motor-car for four-tenths of a mile, and that the speedometer of the police car showed an even speed of 40 m.p.h. Tests of the speedometer had been made before and after the date of the alleged offence by the police constable in conjunction with two other police officers. The police constable alone gave evidence of these tests and that the tests showed the speedometer to be accurate. The High Court had no difficulty in holding that this evidence as to accuracy was inadmissible on the ground that it was hearsay because he relied upon the observations and information given by the other two officers who were not called as witnesses. The defendant, needless to say, relied on the case of *Melhuish* v. *Morris* (1938, 4 *All E.R.* 98) as laying down that speedometers must in all cases be tested, and that a court can only act on the evidence of one police officer supported by a speedometer reading if that speedometer has been tested. The Court in *Nicholas* v. *Penny* has now disapproved of that decision as going too far.

The Court remarked that the justices need never accept any evidence if they do not believe it, or feel that for some reason they cannot accept it. It may be that in any particular case the justices may say, "We are not going to accept the evidence of this speedometer reading," but the question before the Court was whether or not it is necessary, as a matter of law, before the speedometer reading can be accepted, that the Court must have evidence before it that it was tested. If evidence is given that a mechanical device such as a watch or a speedometer—and the Court could see no difference in principle between the two—recorded a particular speed or a particular time, which it is the purpose of that instrument to record, can that by itself be *prima facie* evidence on which a court can act of that speed or time? It might be that in any particular case a court would refuse to act upon such evidence. For instance, if it were a question whether a man died before midnight on a certain day and one party alleged that he died half a minute after 12 o'clock and another party that he died half a minute before 12 o'clock, and the first party said, "It was half a minute after 12 because I observed the time by the clock," it might well be that a court would say, "We do not find that as a fact unless we are satisfied as to the accuracy of the clock." On the facts in *Nicholas* v. *Penny* the speedometer must have been very inaccurate if the offence was not committed, for the offence alleged was driving at a speed exceeding 30 m.p.h. and the evidence was that the speedometer showed at the time in question that the defendant was exceeding 30 m.p.h. by no less than 10 miles an hour. It would have been a considerable error in the speedometer if it were as much out as that.

The Lord Chief Justice explained the law in this way: "It is admissible evidence for a police officer to say in such a case: 'I followed this vehicle at an even distance from it and observed from my speedometer that I was progressing at the rate of 40 m.p.h., and, therefore, he must have been progressing at that rate'. No one is saying that that is more than *prima facie* evidence. There may be cross-examination; there may be evidence given on the other side. The defendant may say: 'That is all very well, but my own speedometer showed that I was only going at 25 or 30 m.p.h., and it is accurate'. The justices have then to make up their minds, and it may be that in such a case they might, having heard and seen the witnesses and considered their bearing in the witness-box, prefer the evidence given by the defendant to the evidence given by the Police." The Lord Chief Justice then went on to say that the question in *Nicholas* v. *Penny* was whether or not, if a police officer says, " I was following this vehicle at an even distance from it and the speedometer on my car showed that he was going not at 30.5 m.p.h., or at just over 30 m.p.h., but at 40 m.p.h.", that is evidence on which the justices can act, although it is not strictly proved before them that the speedometer has been tested. The case was thereupon remitted to the justices to ask them whether, apart from the test of the speedometer which was afterwards carried out by the three police officers, the justices would have held on the evidence of the police constable who drove the police car and his observation of the driving, and of his speedometer, at the time of the alleged offence, they were satisfied that the defendant was travelling at a speed in excess of 30 m.p.h. That is what the justices had to be satisfied about and they could in law be satisfied about it on the evidence which was given, apart from the subsequent test of the speedometer.

Recent Possession of Stolen Property as Evidence of 'Receiving'

R. v. *Aves*

In dismissing an appeal against a conviction of receiving stolen property Lord Goddard, C.J., in the Court of Criminal Appeal in *R.* v. *Aves* (1950, 2 *All E.R.* 330) indicated a proper form of summing-up to be adopted in receiving cases where the evidence is only that of recent possession. This statement forms a useful summary of the law which will be of assistance to those responsible for initiating a prosecution. Lord Goddard said: " Where the only evidence is that an accused person is in possession of property recently stolen, a jury may infer guilty knowledge (*a*) if he offers no explanation to account for his possession, or (*b*) if the jury are satisfied that the explanation he does offer is untrue. If, however, the explanation offered is one which leaves the jury in doubt whether the property was stolen, they should be told that the case has not been proved, and, therefore, the verdict should be Not Guilty."

His lordship thought that he might add the following as an addendum to the formula above stated: " If there is evidence that the prisoner was in possession of property recently stolen and also other evidence which tends to show guilty knowledge, then the judge should direct the jury in the terms which I have mentioned on the question of recent possession and should then go on to deal with the other evidence against the prisoner which may or may not be consistent with the explanation, if any, which he has given."

Aiding and Abetting Consumption during Prohibited Hours: Knowledge Necessary

Thomas v. *Lindop*

This case (1950, 1 *All E.R.* 966) illustrates an important principle of the law of aiding abetting as well as a somewhat curious point in section 4 of the Licensing Act, 1921. Customers in licensed premises had been served with intoxicating liquor before closing time and were still consuming it, or about to consume it, in the bar room of the premises nearly half an hour afterwards, contrary to section 4 (*b*). It was found as a fact by the magistrates that the licensee had no knowledge that there were any drinks in the room or that they were being consumed. An employee of the licensee had served the drinks before closing time. Paragraph (*a*) of the section creates an offence which can be committed by the licensee in selling or supplying for consumption outside permitted hours and paragraph (*b*) creates an offence by the customer who consumes after permitted hours. As the Court said in *Thomas* v. *Lindop*, it is curious that the Act does not make it an offence for a licensee to permit the consumption of any intoxicating liquor after hours, but, so far as the licensee is concerned, the substantive offence is confined to the selling or supplying of liquor except during permitted hours.

The licensee on the facts stated above was charged without aiding and abetting the consumption by the customers. On its being argued that as the customers were consuming liquor after the permitted hours, the licensee must be taken to have aided and abetted that offence, the magistrates convicted the licensee. The High Court allowed her appeal on the ground that it is impossible to convict persons of aiding and abetting the commission of an offence unless they know the facts which must be proved to show that an offence has been committed. It is, of course, not necessary to show that the person knew that it was an offence, because he cannot plead ignorance of the law, but where anyone is charged with aiding and abetting a person to commit an offence, it must, at least, be shown that he knew what that person was doing. A person who does not know of the acts which another person is doing cannot be charged with aiding and abetting him because he does not know that he is doing acts which amount to an offence. The magistrates found that the appellant did not know that anyone was consuming drinks on the premises. The Court said that either actual knowledge was necessary or there must be connivance. If the magistrates had found in the present case that the appellant had shut her eyes to the fact that there were people on the premises or that she had in any way connived at their being on the premises, it would have been an entirely different matter. As things were the appeal was allowed.

What is meant by 'Organizing' an Unlawful Procession
Flockhart v. *Robertson*

By an order made by the Commissioner of Police for the metropolitan police district in pursuance of the Public Order Act, 1936, section 3 (3), public processions of a political character were prohibited in the metropolitan police district. A political organization lawfully organized a procession in the city of London, where the order did not apply, and, after it had broken up, a large number of participants went to the neighbourhood of Knightsbridge which was within the prohibited area. The appellant in this case (1950, 1 *All E.R.* 1091) who was an officer of the organization met other officials and about 150 members at Hyde Park Corner, and he walked along the pavement of Piccadilly accompanied by another member and followed by officials and members in loose formation. He led them to Piccadilly Circus and into Coventry Street where the police dispersed them. At several points on the way the appellant stopped the procession, giving signals by raising his hand, and he gave a signal for it to go from Piccadilly Circus into Coventry Street. The Chief Magistrate found as a fact that a public procession of a political character had come into being spontaneously and without any prior arrangement, that it was illegal, and that the appellant had organized the procession. He was fined £10 and costs. A Special Case was stated for the opinion of the Divisional Court.

In that Court the only question was whether or not there was evidence on which the Chief Magistrate could find that the appellant had organized the procession. By a majority the Court held that there was such evidence. Lord Goddard, C.J., observed that 'organized' is not a term of art. " When a procession is organized what happens ? ", he asked, and continued : " A procession is not a mere body of persons; it is a body of persons who are moving along a route. Therefore, the person who organizes the route is the person who organizes the procession. It seems clear that, at any rate, as from Piccadilly Circus the appellant was organizing the route for this procession to follow, and, therefore, I think there was evidence on which the Chief Magistrate could find that the appellant did organize a procession. If a person indicates the route, plans the route, or points out the route by

which other persons are to go, I think he is organizing a procession." For these reasons the appeal failed.

'Wilful Obstruction' under the Highway Act, 1835
Eaton v. *Cobb*

The appellant, who was the driver of a motor-car, opened the door on the offside of the car while it was stationary and struck a cyclist who was passing. He was charged in *Eaton* v. *Cobb* (1950, 1 *All E.R.* 1016) under the Highway Act, 1835, section 72, which makes it an offence " in any way wilfully " to " obstruct the free passage of any highway." The justices found that the appellant, before he opened the door, looked in the internal mirror reflecting the view through the rear window of the car, but did not see the cyclist who was hidden from his view by the car. They were of the opinion that the appellant did wilfully obstruct the free passage of the highway. The High Court understood the justices' finding to mean that the appellant acted reasonably in looking in his mirror to see if there was anybody passing the motor-car, and through no fault of his failed to see the person who was about to pass the car, but who was hidden by it. " In other words, the justices found every possible fact indicating that there was nothing wilful, using the word in its ordinary sense, in the act of obstruction," and Mr. Justice Humphreys went on to say in his opinion " wilfully obstruct " in a statute which makes such obstruction a criminal offence means wilfully to obstruct. On the facts of the case there was held to be no evidence on which the justices could come to the conclusion that the appellant wilfully obstructed the free passage of the highway. If the justices were right, said Lord Goddard, C.J., everybody who gets out on the off-side of his car would be committing an offence under section 72 of the Act of 1835, and that cannot have been the intention of the section. The appeal was accordingly allowed.

The decision in *Eaton* v. *Cobb* must be distinguished from that in *Watson* v. *Lowe* where, in somewhat similar circumstances, except that the car driver did not look to see if there was anything approaching, the Court held that an offence under section 78 of the Act had been committed. But section 78 is concerned with interrupting the free passage of a highway by negligence, not wilfully. *Watson* v. *Lowe* is commented on in the April issue of this Journal (volume xxiii, 86).

More than One Offence Charged : Information Bad
Bastin v. *Davies*

Although the actual offence or offences charged in *Bastin* v. *Davies* (1950, 1 *All E.R.* 1095) are not primarily the immediate concern of the Police the case provides an instructive illustration of the care which should be used in framing informations based on elaborate statutory definitions of offences. The respondent was charged with having sold to the prejudice of the purchaser a certain article of food "which was not of the nature or not of the substance or not of the quality of the article demanded, contrary to section 3 of the Food and Drugs Act, 1938." At the hearing of the information the respondent contended that the information was bad in law on the ground that it disclosed three separate and distinct offences. The justices dismissed the information, holding that it was bad for duplicity, and the High Court on appeal upheld their decision.

The prosecution argued that the real offence here was selling to the prejudice of the purchaser and that the other words only showed the matters which might be to the prejudice of the purchaser; he relied particularly on the decision in *Thomson* v. *Knights* (1947 *K.B.* 336). In that case, which is commented on in volume xx of this JOURNAL at page 173, a man had been convicted of being in charge of a motor-car while under the influence of drink or a drug and it was sought to say that the information was bad for duplicity because it was one offence to be in charge of a vehicle while under the influence of drink and another offence to be in charge of a vehicle while under the influence of a drug. The court in *Thomson* v. *Knights* rejected that argument because, they said, the offence was driving in a state of intoxication and it mattered not whether the toxic condition was induced by drink or a drug. The reasoning in that case was held not to apply to the charge in *Bastin* v. *Davies*: the defendant was entitled to be told by the prosecution whether they were saying that the article was not of the nature that was demanded or was not of the quality that was demanded. It was not necessary to give a considered opinion of the meaning of the third word used in the information, namely, substance. It was said by the Court that the prosecution must decide what they are going to allege. If they are in doubt they could have issued more than one information. There were different offences in the sense that the constituent facts in the offence would, or might have been, different.

This decision is in accordance with the view expressed in a well-known textbook on the law relating to the sale of food and drugs, but the Court made it clear that it would never hesitate to disagree with a statement in a textbook, however authoritative or however long it had existed, if it thought fit.

DRIVING DISQUALIFICATION LIMITED TO PARTICULAR TYPE OF VEHICLE

Burrows v. *Hall*

It has been found that the division of the Road Traffic Act, 1930, into various Parts has led to some difficulty in interpreting its various provisions as it is not always clear on the face of it whether or not provisions in one part apply by reference to offences in another part.

This was the essence of the difficulty in *Burrows* v. *Hall* (66 *T.L.R.* 1102), an appeal by a chief constable against the imposition of a limited driving disqualification.

The respondent was charged with using a motor-car not insured against third-party risks as required by the Act, contrary to section 35, which is in Part II of the Act. The Recorder limited the disqualification which followed the conviction by confining it to the driving of private motor-cars, so that the respondent remained free to drive a motor-lorry. He was a motor-lorry driver by occupation. Section 35 (2) provides that a person disqualified by virtue of a conviction under that section shall, for the purposes of Part I of the Act, be deemed to be disqualified by virtue of a conviction under that Part. Turning to Part I it will be found that section 6 in that Part provides that "any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class as the vehicle in relation to which the offence was committed." The prosecution argued that there was no room for applying section 6 where the disqualification had to be imposed under section 35.

This argument did not meet with the approval of the High Court on the appeal by way of case stated. It seemed to the Court that the provisions of Part I concerned with disqualification applicable generally to offences under section 35 in Part II. The Court said: "It is a criminal offence in connection with the driving of a motor vehicle, and, although this particular offence is included in Part II of the Act, which is the part concerned with the compulsory insurance of motor vehicles, we think it quite clear that the Legislature intended that a disqualification for an offence against that part of the Act should be treated in all respects in the same way as disqualification imposed for offences against Part I."

FALSE PRETENCES: FORM OF INDICTMENT

R. v. *Johnstone*

Those responsible for a prosecution on a charge of obtaining money by false pretences will naturally have clearly in their minds the identity of the person or persons to whom the alleged false pretence has been made and will have evidence available on the point. But is it necessary that the formal count in the indictment itself should state in so many words to whom the false pretence is alleged to have been made? The Court of Criminal Appeal in *R.* v. *Johnstone* (66 *T.L.R.* 668) answered 'no' to this question. The indictment in that case did not expressly identify the victim of the offence but, as the Court said, no one who read the indictment could be in any doubt that it meant that false pretences were made to the person from whom the property namely, a cheque, was alleged to have been obtained. *Archbold*, the leading treatise on the law and procedure relating to indictable offences, states that "the indictment must state to whom the pretences were made and from whom the goods, etc., were obtained." In support of this a decision in 1894 is cited. This decision, however, is previous to the Indictments Act, 1915, which is the basis of the present law as to indictments. The Act contains certain forms of indictment one of which was followed by the prosecution in *R.* v. *Johnstone*. This form does not require the victim of the alleged offence to be expressly named. The law was changed by the Act of 1915 which made so many changes in respect of the formalities of indictment.

Appealing Against a Jury's Verdict

R. v. *Hopkins-Husson*

It is possible for the accused to appeal successfully to the Court of Criminal Appeal against the jury's verdict of Guilty if that verdict is, in the opinion of that Court, unreasonable or cannot be supported having regard to the evidence. Successful appeals on these grounds are comparatively rare. The principles on which the Court acts are clearly expressed in the judgment in *R.* v. *Hopkins-Husson* (34 *Cr. App. R.* 47). This is a striking illustration of the law on the subject because the trial judge had felt dissatisfied with the verdict of Guilty and had himself granted a certificate for appeal.

The appellant was convicted of the offence of gross indecency with a male person, being acquitted on a number of other counts in the indictment. The summing-up by the trial judge was conspicuously fair to the accused and he expressed surprise at the verdict of Guilty on the count in question. As the Court of Criminal Appeal observed, "he himself would obviously have preferred a verdict of acquittal" but the Court went on to say: "It is also right to say that from a very early period in the history of this Court it has been laid down and has been laid down frequently since, that the fact that the trial judge was dissatisfied with the verdict, although it is a matter to be taken into account in this Court, must not be taken as a ground by itself for quashing the conviction. If it were, it would mean that we would be substituting the opinion of the Judge for the opinion of the jury, and that is one of the things which this Court will never do. In just the same way it has been held from an equally early period in the history of this Court that the fact that some members or all the members of the Court think that they themselves would have returned a different verdict is again no ground for refusing to accept the verdict of the jury, which is the constitutional method of trial in this country. If there is evidence to go to the jury, and there has been no misdirection, and it cannot be said that the verdict is one which a reasonable jury could not arrive at, this Court will not set aside the verdict of Guilty which has been found by the jury."

The Court then reviewed the evidence in the case and came to the conclusion that the verdict could be supported by the evidence. The appeal was accordingly dismissed.

Gross Indecency: No Actual Physical Contact Proved

R. v. *Hunt*

The appellants in *R.* v. *Hunt* (1950, 2 *All E.R.* 291) were convicted of committing an act of gross indecency with each other and were sentenced to twelve months' imprisonment. They were watched by the Police because their movements caused suspicion, and they were found in a shed in positions which the Court of Criminal Appeal described as constituting filthy exhibitions by the one to the other. The jury, having retired to consider their verdict, returned to the court and asked for a direction whether, to constitute the offence under section 11 of the Criminal Law Amendment Act 1885, it was necessary for the prosecution to prove that there had been some actual physical contact between them—touching their private parts, or something of that sort. It is quite clear, said the Court, that physical contact is not necessary to constitute the offence. The Court put it like this: "If two men put themselves in such a position that it can be said that there is a grossly indecent exhibition going on, they can be found Guilty of committing an act of gross indecency. If a third person had walked into this shed, he would have seen the most shocking indecency between the appellants."

The deputy chairman of quarter sessions reported that the bench took a very serious view of the case when they imposed a sentence of twelve months' imprisonment. In the opinion of the Court those sentences were not ones which the offence justified, because there was no element of corruption in it. The place where the appellant performed this act was not a public urinal. It was late at night and in a shed. It was an offence against the statute, but the Court thought that justice would be done if they reduced each sentence to one of three months' imprisonment to run from the date of the conviction.

Length of Sentence of Preventive Detention: Eight Years

R. v. *Sedgwick*

On more than one occasion the Court of Criminal Appeal has called the attention of courts of quarter sessions to the fact that (except to prevent an old man from spending the last days of his life in prison) five years' preventive detention is not a sentence which should be given. The Court made similar observations in *R.* v. *Sedgwick* (1950, 2 *All E.R.* 397) after giving leave to appeal in a case in which the appellant had been sentenced to five years' preventive detention for office-breaking and larceny: "Preventive detention is justified where the court is of opinion that the public have to be protected against the depredations of the prisoner for a long period. A sentence of five years—which means, if the man behaves himself in prison, three years and four months is not appropriate for preventive detention. If the court thinks it is a proper case for a sentence of preventive detention the irreducible minimum is seven years at least, and generally it should be eight years or even longer." Special places have to be set aside for prisoners undergoing preventive detention, and if courts continue to give sentences of five years the Prison Commissioners will be in difficulty because the places so set aside will be filled by people who are sent there for this short period instead of for the longer period which Parliament evidently desired. If the court thinks that the longest time for which the man ought to be deprived of his liberty is five years, subject to the remission of one-third, then the proper sentence to give is five years' imprisonment and not five years' preventive detention.

The appellant in the present case was obviously a public nuisance. He was thirty-nine years old and had had eleven convictions of dishonesty recorded against him. The Court of Criminal Appeal said that he might well have been sent to preventive detention for a long time. The Court decided, however, that it was not going to increase the sentence, but did what the recorder ought to have done if he thought that five years was a proper period of punishment, that is it imposed a sentence of five years' imprisonment in place of one of preventive detention.

CAR STATIONARY AND INCAPABLE OF STARTING: NOT A 'SPECIAL REASON'

Hopper v. *Stansfield*

The justices in *Hopper* v. *Stansfield* (114 *J.P.* 368) found as a 'special reason' for not imposing a driving disqualification the fact that the respondent's motor-car was stationary when found by the police officer and its engine was incapable of being started because of the condition of the battery. On appeal by the prosecution to the High Court the justices' opinion that these facts could constitute special reasons was overruled. The respondent was found by a police constable sitting in her car on a road at night without any lights on. At the time she was so much under the influence of drink as to be incapable of having proper control of it; she had then driven, according to her own statement, six miles. She was convicted of being in charge of the car when under the influence of drink, contrary to section 15 (1) of the Road Traffic Act, 1930, and the justices fined her.

It was held by the High Court that it could not in law be a special reason for not disqualifying that at the moment when a police constable comes up it is found that the car is incapable of moving. If that were so, it was said, it would be equally a special reason if, after a person had pulled up at the side of the road because he was drunk, somebody had run into his car and made it incapable of moving. The fact that the car was incapable of moving when the police constable arrived was neither here nor there. The respondent had been driving for six miles on a road when she was under the influence of drink, and there was no special reason for refraining to impose the penalty which Parliament had ordained. The case was referred back to the justices with a direction that they impose a period of disqualification of not less than twelve months.

'USING A MOTOR CAR AND TRAILER': NO OFFENCE

Rogerson v. *Stephens*

We have the authority of the High Court in *Rogerson* v. *Stephens* (114 *J.P.* 372) for saying that a motor-car and trailer attached are not one vehicle but two, one of which has to be licensed, while the other has not to be licensed. The defendant, whose policy of insurance covered the use by him of a motor-car in connection with his business, was charged with using a motor vehicle and trailer on a road without having in force in relation to the use thereof a policy of insurance or security in respect of third-party risks, contrary to section 35 (1) of the Road Traffic Act, 1930. The point of the case is that the prosecution did not, as it might have done, apply to have the information amended by striking out the words 'and trailer.' The result was that the Court could only read the information as alleging that it was an offence under the section to use a motor vehicle and trailer without a policy of insurance. It is contrary to the section to use a motor vehicle in that manner, but it is not contrary to the section to use a motor vehicle and trailer. The information disclosed an offence which is not known to the law. The information was bad and the justices ought to have indicated that they would be prepared to amend it if they were asked. But the High Court could not send the case back to them with directions to amend the information, because the justices had heard and determined the matter. In fact they had dismissed the summons on some other ground.

Criminal Law and Practice in Scotland

Street Trading

McIver v. *Robertson*

McIVER, the unsuccessful appellant in this case, was a street photographer, whose practice was to take photographs of selected pedestrians in Sauchiehall Street, Glasgow, and, having taken a photograph, to hand to the pedestrian a printed card on which there appeared the intimation "you have just been photographed for Movie Cards—Flashlight Pictures—2 for 1s. 9d., post free. You may call and see them from tomorrow." An address was given. No photographs were actually sold in the street. On January 17th last McIver was found acting in this way. He later appeared in the Central Police Court to answer a charge of having contravened the local Street Trading Bye-laws and was convicted. His appeal against conviction failed.

The Bye-law under which this prosecution was brought was made by Glasgow Corporation by virtue of powers contained in section 5 of the Glasgow Corporation Act, 1946, which empowered the Corporation to make bye-laws regulating the hawking, selling or offering or exposing for sale in any street of goods or articles of any description other than coal, coke, char or any other fuel of which coal or coke is a constituent, subject to a proviso with regard to newspapers. The bye-law was in the following terms "No person shall engage or be employed in street trading in the City as herein defined unless he has been granted a permit for that purpose by the Corporation" and street trading is defined substantially in the terms of section 5. McIver had no permit.

In the opinion of the High Court Judges who heard the appeal the question was a narrow one. "At first sight," said the Lord Justice-Clerk, who delivered the leading opinion, "one would be inclined to say that a bye-law of this kind was intended to strike at the familiar type of street trading where the street trader has in his possession certain articles which he proceeds to dispose of on the spot and Mr. Duffy (counsel for the appellant) pressed on us very strongly that the actual presence of the goods on the street was essential. As I say, it is a narrow point but I am not prepared to give effect to Mr. Duffy's contention. It seems to me that the definition of street trading especially in its reference to offering for sale covers the sort of transaction which took place here. There is no doubt that what the appellant was doing was trading, and with a view to trading he did, as he himself admitted, offer to sell certain goods, and it seems to me that it would be taking too narrow a view to say that the fact that the ultimate product was not

actually in existence and would not be in existence until the following day, when the customer went to the premises to get it, prevented the operation from being an offer for sale. It seems to me that there is enough in the findings in fact in the case to bring it within the bye-law." Lord Jamieson and Lord Russell concurred.

The Right of Search

(1) *Roach* v. *Stewart and McMillan*

An Inspector of Police, on the basis of an anonymous letter which suggested that stolen goods were to be found concealed in the houses of Hugh Stewart and Robert McMillan, two employees at a Command Ordnance Depot in Stirling, applied for and secured from a local Justice of the Peace warrants in common form to search the two houses. In executing the warrant he was accompanied by Harold Roach, a constable of the War Department, whose part in the search was entirely subordinate to that of the civil Police. No stolen property was found. Thereafter Stewart and McMillan, having taken legal advice, raised in the Sheriff Court at Stirling an action of reparation in which they sought damages in respect of wrongous search. The action, which was directed solely against Roach, succeeded. The Sheriff, after proof, awarded each pursuer a sum of £30. Roach appealed to the Court of Session where, in view of the importance of the issues raised, the appeal was ultimately referred to a specially convened court of seven judges who, after a prolonged discussion and an exhaustive examination of authorities, allowed the appeal.

At the hearing of the appeal in the Court of Session, the sole point argued by the respondents in support of the Sheriff's award of damages was that the searches were wrongous because the persons against whom they were directed had been neither charged nor apprehended before the warrants were applied for and obtained. This point, it was contended, was concluded by authority—particularly by a decision of the High Court of Justiciary in 1911 (*McLauchlan* v. *Renton*, 6 *Adam*, 378), in which Lord Salvesen (with whom the other judges concurred) committed himself to the broad proposition that "there can be no doubt that at common law it is illegal to grant a warrant to search the premises of any citizen who has not been charged with an offence, however much the Crown authorities may have reason for suspicion against him." If this could be accepted as a correct and authoritative statement of the law, then it followed that the search of the houses of Stewart and McMillan was illegal—for admittedly there had been no charge preferred at the time when the warrants were procured.

An examination of Lord Salvesen's judgment, however, disclosed that his proposition rested upon a misreading of an earlier decision—the well-known case of *Bell* v. *Black and Morrison* (1865, 5 *Irvine* 57), In that case, a procurator-fiscal presented to a Sheriff a petition which set forth that in taking a precognition against *A* he had recovered evidence showing that *B* and four other persons were implicated in the crimes with which *A* was charged and craved " warrant to officers of court and their assistants to search the dwelling-house, repositories and premises occupied by *B* for written documents and all other articles tending to establish guilt or participation in said crimes and to take possession thereof." This warrant, which the Sheriff granted in the terms craved, was suspended by the High Court of Justiciary as illegal.

The opinion of the Court was delivered by the Lord Justice-Clerk, who rested his decision on three grounds (1) That of the persons against whom the warrant was directed none was under a charge of crime, although they were suspected by the fiscal of being implicated in the crime which he was investigating. (2) Practically no limit was set to the scope of the warrant which would, for instance, cover the seizure in *B's* possession of documents inculpating anyone. (3) The warrant was addressed to ordinary Sheriff officers and their assistants who were to be empowered, whether in the presence or absence of the parties, who had no notice of the application, to read all papers found for the purpose of finding traces of guilt either against the owners or possessors of the papers or against some other person or persons. It was clear (in the opinion of the seven judges hearing the case now reported) that Lord Salvasen had regarded the case of *Bell* as having been decided solely on the first of these three grounds the absence of a charge. This, however, was only one element for consideration in conjunction with the other circumstances of the case. The real ground for suspending the warrant in *Bell's* case was that in the whole circumstances disclosed what was sought was " far too wide and not fenced with sufficient safeguards especially having in view that no charge had been preferred." That this was the correct reading of *Bell's* case was, moreover, manifest from the observations of the judges in the two later cases (civil actions for damages) arising out of the same circumstances, in which the wide scope of the warrant so wide as to constitute " a most unjustifiable violation of private rights "—was clearly the matter which affected the court's mind : and, indeed, the view was expressed that if the Sheriff had limited the search to particular documents or had appointed it to be carried out at the sight of the Sheriff himself, there would have been no illegality.

On the view, therefore, that Lord Salvesen's proposition in *McLauchlan* v. *Renton* was too broadly stated and that it was difficult to see on principle why the lesser invasion of rights involved in a search of a house for stolen goods should be objectionable simply because the more extreme step of charging or apprehending had not been taken, the Judges of the Court of Session reached the conclusion, in the case now under review, that the warrants to search the houses of Stewart and McMillan had been properly granted and executed and sustained the appeal. To this conclusion, however, they added a significant qualification which should be kept well in mind. " Special circumstances productive of exceptional hardship," they said, " may make the granting of a search warrant illegal and in such cases the absence of charge or apprehension may be a relevant consideration but will not *per se* render the warrant illegal. That is a very different thing from stating as a proposition of general application that it is illegal to grant a warrant to search the premises of any citizen who has not been charged with an offence."

(2) *Worshipful Company of Fishmongers* v. *Fairley*

Arthur Wilson Fairley, of the Beehive Inn, Edinburgh, was charged in a private complaint presented in the Edinburgh Sheriff Court at the instance of the Worshipful Company of Fishmongers with contravening the Salmon Fisheries (Scotland) Act by having in his possession 203 salmon taken out of season, 58 of which were unclean. He was convicted and fined a total of £275.

In course of the hearing, counsel for the accused raised pointedly the question of the legality of the search which revealed the presence, in premises controlled by the accused, of the fish which were the subject of the charge and of the admissibility of the evidence of the officers by whom the search was conducted. It appeared that the representative of the prosecutors—instead of relying upon the powers conferred by section 26 of the Act, which provided for the issue of a warrant to search and the use of which would have made available the services of the police—chose to go to the Ministry of Food and give information that he had reason to suspect the accused of having salmon in cold store in contravention of the Act : whereupon an Officer of the Ministry was deputed to accompany the prosecutor's representative on his search. That search, counsel contended, was improper and evidence of its outcome inadmissible.

With this contention Sheriff Garrett, K.C., agreed : but were the irregularities such as necessarily to exclude the evidence ? " One has to balance the public interest with regard to the obtaining of evidence bearing upon the commission of crime against the public interest relating to the liberty of the citizen and especially in these days the court must keep a careful watch upon the exercise, or alleged exercise, of powers conferred on numerous types of officials." None the less, as the officers acted in good faith in a mistaken belief as to their powers and in an endeavour in the public interest to vindicate a law in relation to an offence which constituted a considerable evil and was difficult to detect, it could hardly be said that the mistakes made operated so unfairly against the accused as to withdraw the evidence from the court. Sheriff Garrett, therefore, allowed the evidence and, accepting it, convicted.

"One and a Half Witnesses"
Robert Lynn v. *H.M. Advocate*

In this case—which is likely to be remembered as "the case of one and a half witnesses"—the appellant had, along with two others, been convicted of theft. The Crown case had rested on the doctrine of recent possession and, so far as directed against Lynn, depended upon evidence linking him up with certain journeys made by vehicles in which the stolen goods had been transported, immediately after the theft, from Glasgow to Catterick and, on a later date, back to Glasgow. To prove Lynn's connection with these journeys, the Crown adduced a witness named Paterson who definitely identified Lynn as being one of the two men who arrived at Catterick and departed with the stolen goods and a further witness named Swainston who deponed that Lynn was "like" one of the three men who arrived at Catterick in a Bedford lorry (which, it was proved, contained the stolen goods) but who carefully added "I will not commit myself that it was him." A further witness spoke of a man whom he connected with the transport of the goods and whom others addressed as "Robert," but was unable to identify Lynn as this man.

Lynn's appeal against conviction succeeded but with a virtual dissent on the part of Lord Jamieson, one of the three judges who heard the appeal, who found the case one of difficulty. The decision once again emphasises the importance, in Scots procedure, of the "Rule of Two Witnesses"—of which the classic expression is now to be found in *Morton* v. *H.M. Advocate* (1938, *J.C.* 50). "By the law of Scotland, no person can be convicted of a crime or statutory offence, except where the Legislature otherwise directs, unless there is evidence of at least two witnesses implicating the person accused with the commission of the crime or offence with which he is charged." As was then explained, "The essential idea of corroboration is that the testimony of one witness, whether direct to the actual commission of the crime or indirect to some circumstance implicating the accused in the commission of the crime, is enforced by the testimony, direct or indirect, of some other witness, so that there are concurrent testimonies, either to the same or to different facts, each pointing to the accused as the person by whom the crime was committed. It is this conjunction of separate and independent testimonies, each incriminating, that makes corroboration." In the view of the judges whose opinions prevailed in *Lynn's* case, the non-committal evidence of Swainston was not sufficiently incriminating to pass the test.

Identification by Tooth-marks

Rex v. *Irving and Robinson*

By L. C. NICKOLLS
Forensic Science Laboratory, Wakefield

FORENSIC scientists, in their lectures to Detective Training Courses, have always emphasised the value of tooth-marks and teeth in general as evidence of identification. Enquiries that I have made have shown that occasionally over the years, cases have arisen in which use has been made of toothmarks in the detection of crime, but such cases are not reported, nor has such evidence of toothmarks often been of fundamental importance. For this reason, there is a tendency to overlook the value of such evidence, and the case of *Rex* v. *Irving and Robinson* is a timely illustration that a toothmark at a scene of a crime can be a powerful weapon in assisting detection. The facts of this case are as follows:

On Thursday, March 24th, 1949, Detective Inspector Handley of the Keighley Division of the West Riding Constabulary rang up the Laboratory to say that the warehouse of Messrs. Bright, Collingham & Sons, Ltd., Russell Street, Keighley, had been broken into during the night, a quantity of tea had been stolen, and some butter and other eatables apparently bitten by the thieves. Our assistance was requested. Detective Inspector Towell, the Liaison Officer, proceeded to Keighley, and, as a result of his examination, took possession of two pieces of butter, one of margarine and one of cheese.

In the meantime, a young boy had reported to the Police that he had found a large sack containing packets of tea secreted in some bushes on waste land. Police observation was made of the spot, and a known thief—Robinson—was observed to move the sack. He, unfortunately, became aware of the Police and ran away without removing the contents. When interrogated later, Robinson denied all knowledge of the sack, and concocted a story to explain his presence in the vicinity. Robinson was known to be associated with a local man, Irving.

We had found that the marks left at the scene were the marks of two sets of teeth. Accordingly we supplied the Police with sufficient dental composition to make two impressions, with the necessary instructions for obtaining suitable results, and told them that if they could obtain these tooth-bites of the suspects, we would be able to complete the examination. The Police persuaded the suspects to give bites of their teeth in the composition supplied, and from these bites plaster positives were made in the Laboratory.

A number of difficulties arise which must be overcome if satisfactory results are to be obtained. Firstly, when the suspects have been persuaded to give an impression, usually only one impression can be expected, and this must be used to the best advantage possible. Secondly, casts made from the impression cannot be repeated, nor may they be touched up or altered in any way. Thirdly, the original impression should be preserved, if possible, in good condition, to be produced and identified as an exhibit. These difficulties allow little margin for trial or error.

Comparison of the plaster positives showed that one butter bite, the margarine bite, and the cheese bite, corresponded exactly, in size, position and absence of teeth, with the positive obtained from Robinson, and the minor scratches on the surface of the bites corresponded with the scratches produced by the irregular edges of the teeth. Similarly the other butter bite equally corresponded with the teeth of Irving.

At the Lower Court the accused pleaded not guilty and, in view of the fact that the material evidence consisted solely of the scientific evidence, the solicitor for the defence requested that the case be submitted to the Assizes for trial.

The case was heard on July 13th at Leeds Assizes before Mr. Justice Cassels. I gave evidence that there was the complete agreement between the toothmarks and the plaster casts as described above, and stated that, examining them in the same way as one does instrument marks, and using the same criteria for proving identity, I was satisfied that the bites in the foodstuffs were made by the teeth which had made the dental composition impressions, and I produced photographs illustrating this. These photographs are shown in the accompanying illustrations. I was requested by the Judge to demonstrate to the jury the nature of the fit I was describing. This demonstration, for which I chose the bite of Irving, was, in my opinion, very convincing. Mr. Townend, Chief School Dental Officer to the West Riding Education Authority, gave evidence as to the singularity of the tooth-bites based on his very extensive experience of the examination of teeth.

Both defendants were found guilty, and Irving was sentenced to 12 months' imprisonment, Robinson to two years' corrective training. Robinson appealed, but his appeal was dismissed.

Mr. Justice Cassels remarked on the unusualness of the evidence, and marked its certainty. He rewarded the young boy for his initiative, and then said, " I want also to commend the Police Officers who were engaged in the investigations of this case for their efficient conduct. I hope that this commendation will be duly entered upon their records, and communicated to their superior officers. They acted very, very promptly. I would also like to express the thanks of the Court to the Laboratory of Forensic Science for the assistance which they gave."

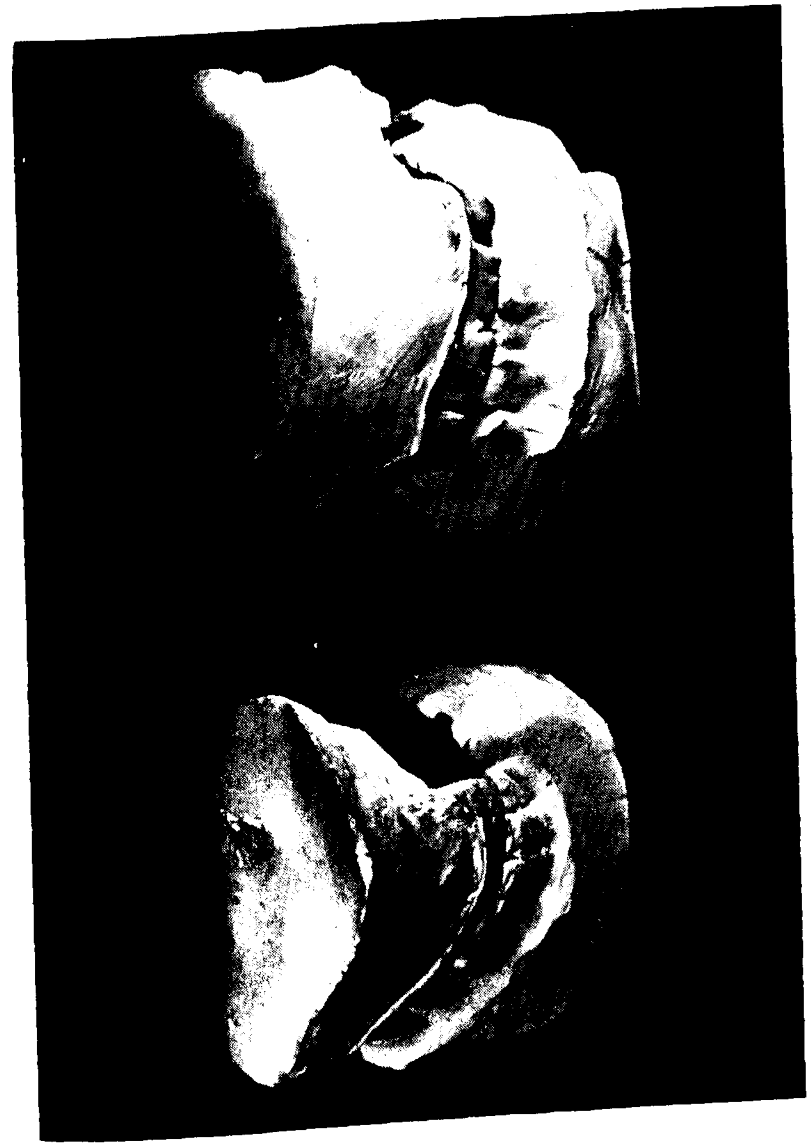
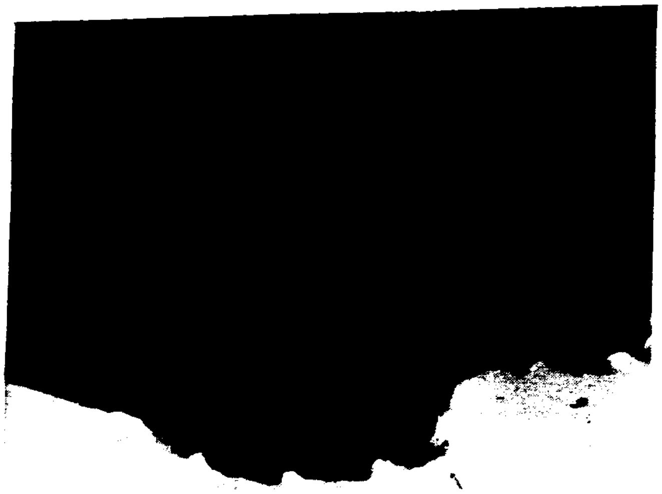


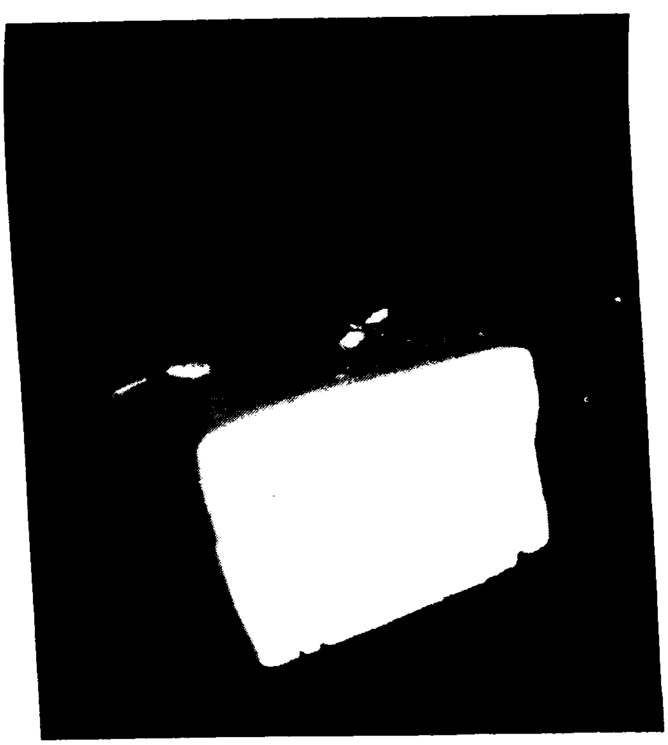
Fig. 1
Plaster casts of dental composition impressions made by Irving and Robinson

(face p. 264)



Piece of cheese showing teeth marks

FIG. 2 Piece of cheese showing teeth marks with plaster cast of the impression made by Robinson fitted into marks



Piece of butter showing teeth marks

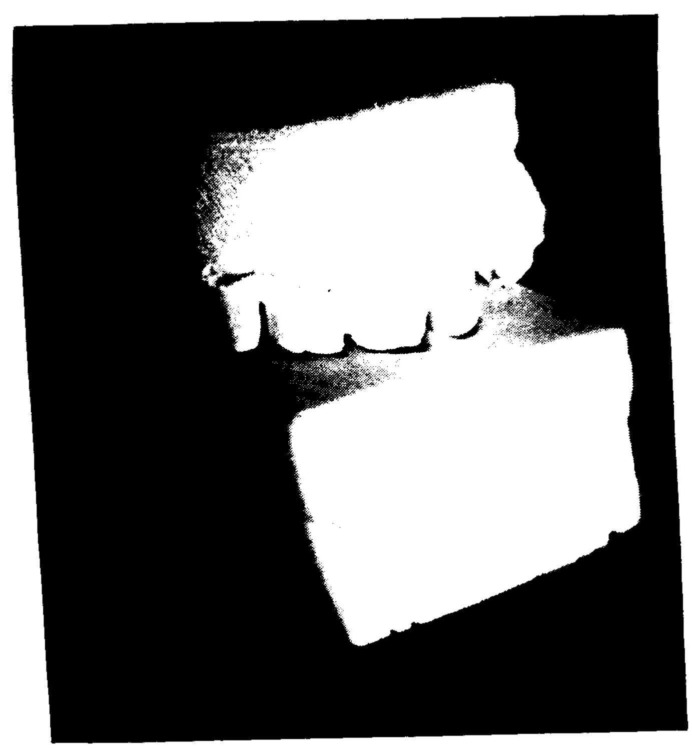


FIG. 3 Piece of butter showing teeth marks with plaster cast of the impression made by Robinson fitted into marks

FIG. 4 Piece of butter showing teeth marks with plaster cast of the impression made by Irving fitted into marks

Piece of butter showing teeth marks

Co-operation between the Uniform Branch and the Criminal Investigation Department in the Prevention and Detection of Crime

By Superintendent F. ELMES
Dorsetshire Constabulary

" The fundamental truth . . . is that society in its most highly developed form is but an elaboration of society in its rudest beginnings, and that principles obvious in the simpler relations of men are merely disguised and not abrogated or reversed by the more intricate relations that result from the division of labour and the use of complex tools and methods."

Henry George : *Progress and Poverty.*

SPECIALISATION and the use of complex tools and methods have certainly not abrogated the claim made by the newly appointed Commissioners of Police of the Metropolis in 1829 : " The primary object of an efficient police force is the prevention of crime." It is, however, true to say that more than a century of experience has tended to overlay this most fundamental of police principles—not, as might be expected, with the grime of neglect, but with a glittering veneer of technical achievement, especially in the field of criminal investigation. A good veneer may be both beautiful and extremely useful ; but it may sometimes conceal from the superficial gaze the solid worth of the article beneath.

Merits and Demerits of Specialisation

Division of labour has been a marked and inevitable accompaniment to all advances of civilisation, and by the same law it is equally inevitable that division of labour, specialisation as it is called, should have become more and more necessary in our developing Police Service. Looking back again to 1829 it is interesting, and to us moderns surprising, to find that no provision was made for a detective force. Plain clothes were worn on occasion by the new police for carrying out some types of duty, but the practice received a setback and brought considerable odium on the young and struggling organisation when, in 1833, one of the " plain clothes men," Popay by name, was found to have abused his trust by playing the part of *agent provocateur*. Not until 1842 was a detective branch officially inaugurated and a small start made on a road which has been followed steadily ever since.

Prior to 1842 no problem of co-operation arose because there were no two branches of the service to cohere. After 1842 and progressively since *the problem has grown in proportion to the accretion of strength to the C.I.D.* This simple statement may appear startling at first sight, but any policeman of long experience will recognise its truth after a moment's thought. Glancing back to the not too far distant past we have a picture of police establishments in which C.I.D. personnel were a quite tiny minority. Particularly was this true of County and small Borough Forces, and in these Forces the problem of co-operation was correspondingly small since the bulk of crime enquiry and preventive work was automatically done by the uniform branch, the few detectives acting as skilled aides. No difficulty was experienced in keeping the uniform men interested in crime: they *had* to be interested, it was *their* job. Where trouble did arise as between the one or two detectives and the uniform branch, the worst sufferers were the detectives, so that in pure self-interest they had to show compliance sufficient to win help and support.

Between the wars 1914-1918 and 1939-1945 there was a swift upward leap in the numbers of detectives, especially during the time the Committee on Detective Work and Procedure was sitting (1933-1938) and the year or so following the publication of the Committee's *Report*. (See paragraph 5, Chapter 1 of the *Report*.)

No reasonable person reading this *Report* could question the case put forward for increased specialisation and increased detective staffs. The improved systems of recording crime, the increased mobility of criminals, the greater ease of communication, the more complicated type of crime as fraud grew more common, and the ever-growing volume of legislation—all these things called for the employment of larger numbers of experts, people who were specialists in their own line. To-day we have reached a stage where every Force has a fairly adequate C.I.D., backed by the formidable resources of the Forensic Science Laboratories, Finger Print Departments, and C.R.O. Good communications plus regular C.I.D. conferences and standardised courses of training tie up the whole country in a reasonably efficient detective network.

Here then are the merits of increased specialisation, the irrefutable proof of the necessity and advantages of a strong C.I.D. The demerits of the change are almost entirely to be found in the effect all this has had on the uniform branch. Let us face them. First and foremost the increased strength of the C.I.D. has meant that the amount of crime enquiry work done by the uniform men has decreased. In some urbanised Forces it has been reduced almost to nothing.

Secondly, the growth in size and importance has enhanced the prestige of the C.I.D. to a point where selection for detective duties is regarded as a promotion. Human nature, as we all tritely but truly say, being what it is, some detectives are thus prompted to feel themselves superior beings, and a goodly proportion of the uniform branch to mildly resent the set-up. Detection of crime, apt to be romanticised in the Press and literature generally, has in the Police Service become just a trifle snooty.

The Core of the Problem

Here then is the core of the problem. Division of labour, absolutely necessary as it is, has led us perilously close to a division of interest. Clearing up crime is so much more satisfying and concrete than preventing hypothetical wrong-doing, that the detection side has overshadowed prevention and, in prestige if not in performance, the C.I.D. has outstripped the uniform branch. Not unnaturally there has been a split between the two factions, a split which in a few Forces is grievous. This is not an exaggeration. One remembers a senior C.I.D. officer of a large urban Force who, when detailed to talk to a class of detectives on "Co-operation with the Uniform Branch" asked, "What can I say to them? It simply doesn't exist."

Remedial Measures

Broadly speaking the Police Service is confronted with a difficulty similar to that created in the economic world. Black-coated workers have built up for themselves a prestige, a social position, superior to that of the manual worker—a superiority incidentally which is by no means always reflected in the pay packet. Human vanity has thus made non-productive jobs more attractive than actual producing, a position which has an evil effect on the body economic. In the Police Service so much prestige attaches to the detective side of the work that almost all police officers have C.I.D. ambitions, which sometimes turn sour when remaining unfulfilled. In any case, the uniform branch is afflicted with doubts about the importance of its own work, and crime prevention thus suffers.

The remedy in both situations is to work back to a simpler and truer view-point. Economically the need is to produce, and manual and black-coated workers should be made to feel that each is complementary to the other: that the actual producer is fundamentally the most important though unable to get along without his opposite number in the office. The Police Service must similarly go back to the principle of prevention as originally propounded, and let the detective branch find its own level as part, albeit an indispensable part, of the service.

Detectives are, of course, apt to argue that if all crimes were detected no greater preventive measure could possibly be found. This is perfectly true in the fashion of a reflection in a distorting mirror. The corresponding retort is that if all crime was prevented there would be no need for a C.I.D. Both statements are ridiculously idealistic; neither even attempting to reconcile itself to actual conditions. Both detective and preventive methods are of vital importance and both must, and do, aim at the same mark, a crime-free State.

First in the list of remedial measures, then, one would place a reorientation of ideas, a correction of over-emphasis on the side of detecting crime. The need is not to lessen the importance of criminal investigation but to put in stronger heart those in the Service who are engaged mainly on preventive work.

Evidence is not lacking to show that faith has been lost by some. Serious questions have been asked as to the value of the "scarecrow" function of the Police, and there is a general keenness among the uniform branch to escape into the surer and more positive realms of C.I.D., Traffic and Office.

This is a sad business because, despite it, all the time the preventive value of good patrolling is demonstrated in our day-to-day work. Traffic patrol, for example, has prevention for its aim; a thickly policed area shows less crime than a corresponding but thinly patrolled district, and so on. Where patrol loses its value is where it is done with little faith as to its usefulness, so that we are once again back to the point that a restatement of aims and ideals is needed. Let us grasp firmly the old principle—good detection fills prisons but good prevention empties them.

One Police Service or Two?

A pertinent question which may usefully be considered at this stage is whether it might not be desirable to have an entirely separate service to deal with crime investigation, a service with which the uniform police would co-operate in the same detached kind of way as they do with the Fire Service. A necessary corollary to this kind of proposition is the acceptance of an assumption that much higher qualities are required for investigation work. There is nothing novel about two-tier policing, a number of countries use it and, indeed, many members of the British public on hearing the magic words "Scotland Yard" conjure up visions of a special Force staffed by no ordinary men. But can such a two-tier arrangement be grafted on to the British Police system? The Committee on Detective Work and Procedure recognised the great value of training on the Beat, and it is difficult to visualise a detective force which would be really efficient whilst holding itself aloof from the more mundane side of police work. The title of this essay plainly envisages no such division of policing into two separate compartments; a cohesive whole is the aim and ideal. A "man and superman" conception does not fit into the British policing method and is contrary to all prevailing trends of police thought.

Towards the Goal

The Committee on Detective Work and Procedure devoted one short paragraph (Para. 89, Chapter II) to "Co-operation of the C.I.D. with the Uniform Police." This does not mean that a most important matter was given short shrift—it crops up in a variety of ways throughout the *Report*. In paragraph 89, however, the nail is hit squarely on the head with the statement, "Obviously the success of any measure for associating uniform police with detective enquiries depends entirely on the co-operation of the detectives particularly concerned." If the C.I.D. learn this brief but significant lesson thoroughly many of our difficulties will be swept away.

Providing Information

Information is a term which, in the Police Service, is likely to evoke visions of fat wads of printed and typed circulars, and interminable radio, telephone and teleprinter messages. Nothing is more calculated to give a policeman mental indigestion than to suggest that what he needs is more "information."

Nevertheless that is exactly what is required to increase the amount of co-operation between uniform branch and C.I.D. Information, as any Service Staff officer will tell you, must be the basis of all action. Without adequate information there is much wasted effort and a great deal of groping in the dark. The object to be achieved in crime prevention and detection is thus to convey full information to the uniform branch, and to present it in a form which will arouse interest and be readily assimilated. Do this and there will soon be a stream of counter information flowing back from uniform branch to C.I.D.

Dealing first with local crime, it is patently essential that patrolling officers should be kept up-to-date with local tendencies as to type and location of crime, persons suspected, and local criminals. Visual aids such as photograph albums, maps and graphs, will help in this, but a method which cannot be beaten *if the right personality is found* is a regular, chatty talk by a C.I.D. officer to the patrol-men. In the course of such talks "information" can be made to come alive and really mean something to the man who has to translate information into terms of intelligent patrol. Scenes of crime described may bring ideas both to the C.I.D. officer and his listeners as to the culprits, and possible ways of prevention and detection, so that all-round benefit results. After all, the uniform men should be the Service's best "informants." The success of this kind of approach does, however, depend entirely on the right degree of enthusiasm brought to bear by the C.I.D. officer entrusted with the task. A display of boredom, or a note of apology for trouble caused, can kill the usefulness of the talks stone dead. The choice of the C.I.D. man for this kind of work is thus at once the strength and weakness of the scheme.

Information as to crime other than local is a major problem. There is so much that some kind of sieve is certainly required. It is very fine in theory to say that each police officer should study for himself the *Police Gazette*, postal circulars, telephone and radio messages, but in practice it is a sheer impossibility. Either the most perfunctory attention is given or the man spends an inordinate time over the acquisition of information, thus inviting criticism from superior officers if there is delay in getting on to the Beat. The answer seems to be a generally accepted method of editing information for the consumption of the patrol-man, a task which a C.I.D. officer could well undertake. If, further, the information could be reduced to writing on pocket-book size sheets, which all police officers could carry with them, a great deal of time would be saved. The method must, however, be generally accepted in principle as worth while—otherwise the disadvantages necessarily attaching to the system will be used to discredit it by those in the Service who prefer a pleasant anarchy in this matter of information to any ordered attempt to control it. The case the anarchists put up is, quite briefly, that if you leave each man to find his own way through the mass of information available each will pick up something which interests him individually as well as the more obvious things, thus achieving a better *all round* result than edited information would do. It is a facile argument, specially attractive in these days of revolt against "regimentation," but is it sound? If there is any substantial doubt about the answer then let the anarchists prevail.

Operational Cohesion

Linking the C.I.D. and the uniform branch through more succinct and interesting information is probably less difficult than linking them operationally. It is so fatally easy to let each branch go its own way and do its own work without reference one to the other that it is no wonder that in some Forces this is the method (or lack of method) used.

First and foremost, before anything else is done, it is necessary to achieve a sympathetic understanding between the two branches. An essential preliminary to bringing this about is that there should be no mystery as to the work done by either department. All the C.I.D. men have started their careers in uniform so they can readily understand the work performed by their uniformed brethren, its scope and its limitations. Not so easily is the work of the C.I.D. interpreted by the uniform men unless they have had C.I.D. experience. One has heard the C.I.D. playfully referred to as the "idle rich," and there is a proportion of the uniform men willing to believe that the C.I.D. pleases

itself whether it works or not, and is paid extra for this attractive privilege.

Obviously it is important to correct this impression at the earliest moment in each policeman's career, and it can best be done by secondment to C.I.D., as a part of early training, for a period long enough to give reasonably full understanding. Three months appears a suitable time for the purpose and, besides achieving the primary object of giving the trainee an insight into investigation work, it would also give young officers with a flair for enquiry a chance to demonstrate it at an early stage in their service.

Rather more open to objection is the practice, carried on in some Forces, of using promotions to switch men from one branch to the other. Nothing but good can come of switching, say, a Detective Constable to the uniform branch on promotion to Sergeant. There he will be able once more to balance his views as to the all-round purpose of the Police Service and, what is more important, to give fresh impetus to interest in crime prevention and detection among the men with whom he serves. The reverse procedure, sending a man on promotion from the uniform branch into C.I.D., has to be followed with more care. Experience on the investigation side is vital to an officer who has to supervise the enquiry work of others, so that it would be bad practice, in the normal case, to promote, say, a uniform Sergeant to the rank of C.I.D. Inspector unless he had good C.I.D. experience beforehand. Among the higher ranks of the C.I.D. switching is, to a large extent, inadvisable, if it can be avoided. A really senior C.I.D. officer finds it hard to give proper weight to traffic and other problems if he is transferred from his own Department. Conversely a senior C.I.D. officer should always be a man of long specialisation on the crime side. Exceptions to this rule could doubtless be found, but general experience would confirm that senior C.I.D. officers should essentially be C.I.D. trained, and that men of long experience in the Department are apt to be blind to the other side of police work.

However, despite objections and qualifications, it is probably a bad thing to create water-tight compartments, as in some larger Forces where appointment to C.I.D. means appointment for the rest of the man's service. Fluidity as between the two branches is bound to help the flow of understanding and thus to secure the operational cohesion which is so vital to the well-being of the Service.

Keeping the Uniform Man in the Picture

Specialisation has advanced in some Forces to the degree where the uniform man, on receiving the report of a crime, takes what immediate action may be necessary and then hands over to C.I.D. at the earliest possible moment. This has advantages. Crime enquiry is in the hands of experts; the arrangement keeps the patrol rota running smoothly and the overtime situation tidy. But it has horrible disadvantages—the most horrible of course being the check to incentive on the crime side. Great damage may be done as a result; slipshod approach to scenes of crime, prisoners advised to "Keep your big mouth shut," and so on. Things like that can and do happen, though one does not suggest they are frequent. When they do occur they must be recognised for what they are, symptomatic of a system which has grave faults.

Difficult though it may be, all Forces should strive for a state of affairs where the uniform man, once he is well and truly in a crime picture, is kept in. Disruption of neat duty rotas occasionally is a small price to pay for the added crime interest which comes to members of a uniform staff likely to be able to follow through a crime matter initiated by them. Not all uniform men would wish to do more than preliminary work prior to yielding place to C.I.D., but if the opportunity to do more is there no room is left for complaint.

Methods of Patrol

Earlier mention has been made of the lost faith in uniform patrol as a preventive measure. The Post-War Committee made an examination of the Beat System and, although the Committee commented on the fact that little change had been effected over a hundred years, there was nowhere a suggestion that patrol was unnecessary or ineffective. On the contrary the Committee was "convinced that the beat system must remain an important feature of the police organisation of this country." (See *Second Report of the Police Post-War Committee.* H.M. Stationery Office, 1*s.*)

A major issue was thus disposed of very quickly and the Committee, assuming the usefulness of patrol to be beyond argument, examined the various known methods of deploying beat officers and patrols. Not all of us in the Police Service are yet convinced that there is any better way of patrolling towns than on foot, but even the most ardent traditionalist in this respect has to admit that if it is to be efficient it is expensive, because foot patrols must be fairly thick on the ground, and that it is apt to be boring except to the real enthusiast.

In urban areas where crime is heaviest there seems to be a great future for the kind of team-working known as the Block system, the Aberdeen system, or roving patrol. Improved transport and communications are an integral part of this system and there can be little doubt that a much improved level of interest in patrol work can be achieved by it. Team spirit is encouraged within the group of men working a particular area and there is room for a competitive element as between teams, provided it is properly controlled.

A discussion of the details of this comparatively new type of patrol, although attractive, would be merely a diversion from the subject in hand, but as the system is vitally linked to the question of co-operation between the uniform branch and C.I.D., it is necessary to consider it in principle and what it offers in the way of opportunity for co-operation.

Adequate information, referred to above, is obviously the basis of intelligent team patrolling, and the supply of this information is a proper responsibility of the C.I.D. First and foremost, however, there appears to be an ideal opportunity to knit the two branches operationally into the team patrol system. It is a common experience that if one C.I.D. officer is attached to a small section of men, as in a rural area, he will inevitably team up with the men of the section and become part of the whole. In such a set-up co-operation is as complete as human nature will permit. This experience with small units can thus be readily repeated in the towns under the team system if C.I.D. men are attached to teams and made to work as members of them. Their knowledge of crime matters would bring to the team in peculiarly live form the information on which preventive and detective action could be based. Active participation by the C.I.D. man in patrol would keep him in touch with the patrol-man's problems, bringing him into intimate contact with potential informants, and benefit both his own Department and the uniform branch. Such a scheme might also check the tendency for C.I.D. men to do too much work in the office. "Catching thieves on Paper" has its attractions, but the likeliest way to catch thieves is still to go out and look for them.

A substantial development of team patrol may well involve an increase in C.I.D. personnel, but this would not be a bad thing provided the men were really used in the teams and not just "loaned" when there was nothing better to do. Naturally a "team" detective would not be as readily available for general detective duties as his confrère working under currently prevailing conditions, and it would obviously be essential to maintain a sufficient number of detective officers who were foot-loose and unfettered in their movements by the necessity of conforming to a rigid duty system.

Little mention has been made of traffic patrols as, though now forming an important third branch of the Service, they are still essentially uniform officers. If the team system and mechanised patrol generally is to develop on right lines there is, however, plainly a need to have intimate linking up between the general patrol and specialised traffic patrol. Traffic patrols must operate at hours and places where traffic conditions most need their presence; but this prime consideration should certainly not preclude traffic patrols from taking a proper interest in the crime side of police work.

CONCLUSION

The team system of patrolling, affecting as it does the larger urbanised areas, offers the brightest hope of enhancing C.I.D. and uniform branch co-operation because it attacks the problem where it is strongest and most difficult of cure. Rural policing is still largely in the hands of the uniform branch so that there, where substantial specialisation has not penetrated, no serious difficulty arises. An officer on a country beat works in his own way at his own petty crime problems and welcomes help, and expects to get it, if he is *involved* in a case of importance. It is plainly in the towns where we have to struggle to re-establish a proper community of interests; where we have to break down the attitude that a particular task is the job of someone else and thus no concern of mine. To do this the current of thought which has been allowed to gain impetus must be checked and reversed. Prevention of crime must be allowed to take its rightful place in order of precedence, and must be freed from the "dust, dirt and debris" of technical advances made almost entirely on the detection side.

Whether it is possible to do this without accusations of bias against the C.I.D., and rousing the Department to defend itself from imaginary dangers, it is difficult to foretell. But that is the need: To put the uniform branch in good heart again and thoroughly at one with their detective comrades; to share problems and work; to mix freely without superiority on one side or the other.

Ways and means of doing this have been suggested; but ways and means are matters of detail, tactics and not strategy. Failure, such as there has been, is largely in tactics; strategy, that is, the general conception of what the service should be like, has remained fundamentally sound. The trouble in the past has been insufficient frankness, a reluctance to face a situation which, if allowed to drift, might have very serious effects on our police system. The writer, a former member of the C.I.D., thinks the responsibility rests, in the main, where the Post-War Committee so squarely put it, on the shoulders of the C.I.D. It is for the Department to work at the problem, to realise that the production of good detectives is not enough; that the aim should be to produce a good Police Service.

Voices of protest may be raised claiming that the responsibility rests higher up, with Chiefs of Police or with Police Authorities. Let us not be deluded. No Chief of Police worth his salt desires a Service with two clearly divided branches. Chief Officers thus dictate policy aimed at proper co-operation; but with the full knowledge that policy can be, and often is, broken on the wheel of detail. The C.I.D. supply most of the detail and to the Department the Service must look. An Athos to a Porthos—with Traffic as Aramis—all for one and one for all.

Police and the Supervisor

By INSPECTOR J. EDMONDSON
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PURSUANT of the Motor Vehicles (Driving Licences) Regulations, 1950, a provisional licence shall be granted only subject to the condition that until the holder thereof has passed the appropriate test he shall, except in the case of a vehicle (other than a motor-car) which is not constructed or adapted to carry more than one person or when he is undergoing a test, use it only when under the supervision of a person who is the holder of a licence other than a provisional licence authorising him to drive a vehicle of the same class as the vehicle being driven, and who has been the holder of a licence for at least two years or has passed a test under s. 6 of the Road Traffic Act, 1934, who shall be present in the vehicle with him, *provided* that for the purpose of the above a motor bicycle shall not be deemed to be constructed or adapted to carry more than one person unless it has a sidecar constructed for the carriage of a passenger attached. It is further provided that the vehicle while being driven by him shall clearly display in a conspicuous position on the front and on the back a distinguishing mark in the form of a letter "L."

Arising out of the practical application of the above, what legal right (if any) have we to request the production of the driving licence of the "supervisor" of a driver holding only a provisional driving licence? The legislature, it would appear, gives us no positive mandate.

Before we can give effect to this legal requirement we must first of all call upon the driver to stop, which, pursuant of s.20(3) of the Road Traffic Act, 1930, any constable in uniform may do. To take the sequence to a nicety any constable *whether in uniform or not* may request the production of the driver's licence.

Assuming that the vehicle is displaying "L" plates and the driver's provisional licence is in order, the only point on which we require to satisfy ourselves further is that the "supervisor" (*a*) is the holder of a licence (of the appropriate group) other than a provisional licence, (*b*) that he has held a licence for at least two years (*N.B.*, not necessarily the *last* two years) or (*c*) that he has passed the appropriate driving test.

Invariably our curiosity on this point will be satisfied immediately or within five days by the "supervisor" producing or electing to produce his driving licence for inspection. Whether that be the case or not is of course no moment for the purpose of this article, because sometime, somewhere, we shall inevitably encounter the person who will challenge us and our authority on this very point. So what if the licence is not produced, either immediately or within the statutory five days?

At first sight one might incline to the view that as the fact at issue is one which must invariably lie within the knowledge of the driver it is for him to prove the affirmative if proceedings are taken against him. In other words, the *onus probandi* is passed to the accused, as it might well be in an ordinary straightforward case. For example, a motor driver is requested by the police at "A" to produce his driving licence. He fails to produce it but elects to produce it to the police at "B" within five days. The licence which is subsequently produced is found not to cover the material date, and process is issued by the police at "A" against the driver. In such a case it is *not* (and this is the material point) necessary for the prosecution to call as a witness the constable at "B" to whom the driver produced the non-applicable licence, if we might term it such.

The onus of proving that he had a driving licence at the material time rests on the accused as this is a fact which lies, or at least should do, peculiarly within his own knowledge. It will readily be appreciated that if the law were otherwise and the prosecution were in such cases called upon to prove affirmatively and conclusively that a person had *no* driving licence on a particular date, it might, in some instances, be necessary to call as witnesses some person from every taxation department in the country - not of course forgetting Northern Ireland. Ample support for this proposition will be found in *R.* v. *Clarke* (1799) 8 *T.R.* 220; *R.* v. *Turner* (1816) 5 *M. & S.* 206; *R.* v. *Burdett* (1820) 4 *B. & Ald* 95; *Apothecaries Co.* v. *Bentley* (1824) *Ry & Moo* 159; *Roche* v. *Willis*, 98 *J.P.* 227; *R.* v. *Scott*, 86 J.P. 69; *Huggins* v. *Ward L.R.*, 8 *Q.B.* 521; 37 *J.P.* 405; *Williams* v. *Russell*, 97 *J.P.* 128; 149 *L.T.* 190; *R.* v. *Oliver*, *J.P.*30.

But can it be logically argued that the knowledge whether the "supervisor" has or has not a current driving licence, etc., must be peculiar to the driver, seeing that it is part and parcel of the legal requirements which permit him to drive whilst the holder of a provisional licence? If that be the case, then in the circumstances instanced, the driver might be proceeded against for not being accompanied by a "competent" supervisor and it is for him to prove the contrary. It would appear doubtful, however, whether the courts would accept this procedure, for the simple reason that a driver would be open to conviction more or less at the will of his supervisor. To take another point: would it be reasonable to expect a pupil to request the production of the driving licence of his tutor before proceeding on his course of instruction? (I am thinking more of the tutor who holds himself out to give driving instruction by way of a profession.) It would appear not.

In searching further for a possible solution, it may be germane to take a cursory look at the duty which devolves on the supervisor. Is he there merely as a sort of accessory, *e.g.* like a warning instrument,

to be fitted but not necessarily used; or is he under some obligation not only to his pupil but to the public?

We need look no further than the case of *Rubie* v. *Faulkner* (1940) 1 *K.B.* 571; (1940) 1. *All E.R.* 285; 104 *J.P.* 161 to find that the supervisor must be very much alert, for if he remains passive when he should be active and thereby allows his pupil to drive carelessly he (the tutor) might be convicted of aiding and abetting the offence.

We can see therefore that the task of the supervisor is veering somewhat from the menial of a "journeyman" to the more exacting duties of an actual driver, and the climax appears to be reached in the case of *Marsh* v. *Moores and Another*, 113 *J.P.* 346, where the opinion was expressed that in these circumstances the supervisor still remained the driver.

In the case instanced the circumstances were these: A company which owned a motor-car was insured under the terms of its policy against liability for "death of or bodily injury to any person (except a person employed by the company) and damage to property other than that of the company, arising from an "accident caused by or through or in connection with" the specified car. By an exceptions clause the insurance company was not to be liable while the car was "being driven with the general consent of the insured by any person who to the insured's knowledge does not hold a licence to drive such a vehicle unless such person has held and is not disqualified from holding or obtaining such a licence." The policy also covered any person driving the car on the company's order or with its permission, provided that such person held a driving licence or had held and was not disqualified from holding or obtaining such a licence.

The company's managing director authorised his son, who held a driving licence, to drive the car on a particular journey, on which the son, with the knowledge and permission of the father, was accompanied by his cousin, a girl of 17, who, to the son's knowledge, did not hold and never had held a driving licence. During the journey the son allowed his cousin to take the wheel of the car while on the highway and gave her a lesson in driving, he himself sitting beside her ready to operate the hand-brake. They were charged respectively under s.35(1) of the Road Traffic Act, 1930, with using a car and with permitting a car to be used on a road without there being in force in relation to the user a policy of insurance in respect of third party risks which complied with the requirements of Part II of the Act. The justices dismissed the informations and on a Case Stated it was held, *inter alia*, that, as the son still retained the control and management of the car at the material time, ***he remained the driver***. In the course of his judgment Lynskey, J., said, "In my view he still retained the control and management of the vehicle. He still retained some power to control the driving of the vehicle by operating the hand-brake and in instructing Patricia Moores as to how she should drive. In these circumstances, it seems to me that he still remained the driver of the car. . . ."

If therefore, we accept this ruling as relevant, the supervisor will be liable to all the impositions and penalties of a driver and consequently he might, presumably, be requested to produce his driving licence pursuant of s.4(5) of the Road Traffic Act, 1930.

Even so, the problem is, or at least may be, far from being effectively disposed of. A dictionary definition of " licence " is " permission from an authority, frequently required to be paid for; a certificate giving some official permission." A driving licence, therefore, *gives* permission to drive, and consequently a document which *has given* permission to drive has ceased to be a driving licence, and might colloquially be called an " expired driving licence." The relevance of this will readily be appreciated when we remember that in addition to establishing that the supervisor is the holder of a licence, we must, *unless he has passed the appropriate driving test*, satisfy ourselves that he has held a licence for at least two years (as previously mentioned, not necessarily the last two years). Where, therefore, do we derive our power (if any) to request the production of expired driving licences, which are, in fact, not licences at all ?

Unless our first possible solution is correct, there appears to be no legal solution to this further problem within a problem and we must await the efforts of the legislature.

Meanwhile, perhaps the supervisors will continue to " oblige."

The Law Relating to Witnesses

By Sergeant W. Wills
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MANY volumes have been written on the laws and rules of evidence and such a vast subject is of necessity complex. In an endeavour to gain a general knowledge of the more important legislation it is convenient to consider the subject in certain well-defined stages. In this article the writer has dealt briefly with the position of the witness in criminal proceedings from the time it is decided to call him to give evidence until he leaves the witness-box.

It is a basic principle of English Law that the jury or the Justices who are charged with the duty of deciding the guilt or innocence of the accused shall reach their decision solely upon the evidence. The function of the respective witnesses is to place before the Court that testimony upon which the final issue will be decided.

Since the verdict depends solely upon the evidence, the law relating to persons called to testify is of fundamental importance. The witness is under a solemn obligation to speak the truth, and in giving his evidence must comply with certain clearly defined rules.

It is proposed to consider his position under the following heads:

1. Who can give evidence ?
2. Enforcement of attendance of Witness.
3. Oath of Witness.
4. Examination of Witnesses.
   (*a*) Evidence in Chief.
   (*b*) Cross-examination.
   (*c*) Re-examination.
5. Recalling witnesses.
6. Rebutting evidence.
7. The accused as a witness.

1. Who can give Evidence ?

Generally speaking, all persons are competent witnesses. The following are exceptions:

1. Idiots and persons of unsound mind.
2. Children who are too young to understand the meaning of speaking the truth, or of insufficient intelligence.
3. Persons who will not take the oath or affirm.

Whilst all competent witnesses may give evidence for the defence of the accused, at common law the husband or wife of the accused cannot give evidence against him or her unless the charge is one involving personal injury to the husband or wife. In this case, the husband or wife of the accused is a *compellable* witness.

The Criminal Evidence Act 1898, and certain later statutes, have enacted that the husband or wife of the accused may be called to give evidence for the prosecution, and for convenience a list of such offences is set out hereunder :

1. Vagrancy Act 1898—trading on prostitution, living on immoral earnings, etc.—by virtue of the Criminal Law Amendment Act 1912.
2. Bigamy—by virtue of the Criminal Justice Administration Act 1914.

By virtue of the Criminal Evidence Act 1898:

3. Neglecting to maintain or deserting wife and family.
4. Offences within Married Women's Property Act 1882.
5. Offences against the Person Act 1861—rape, indecent assault, abduction.
6. Criminal Law Amendment Act 1885—all offences (carnal knowledge, procuration, etc.).

7. Punishment of Incest Act 1908—all offences.
8. S. 56 Mental Deficiency Act 1913—offences against female mental defectives.
9. Infant Life Preservation Act 1929—child destruction.
10. Offences against children and young persons as mentioned in First Schedule of the Children and Young Persons Act 1933.

2. Enforcement of Attendance of Witness

There is provision to enforce the attendance of anyone whom the Court believes to be able to give material evidence. Moreover, the Court can require the production of documents, etc. believed to be in a witness's possession.

If he will not appear voluntarily, he may be summoned to do so, and if he disobeys the summons a warrant may be issued for his arrest. (Ss. 2 and 7 Summary Jurisdiction Act 1848; Ss. 1 and 16 Indictable Offences Act 1848, and s. 29 Criminal Justice Administration Act 1914.)

If when brought before the Justices he refuses to take the oath or affirm, or if having been sworn he refuses without just excuse to answer questions, a justice may commit him to prison for seven days unless he consents to be examined. (S. 7, S.J. Act 1848; s. 16 I.O. Act 1848.)

There is no power to commit a witness under the above sections if he has appeared voluntarily.

3. Oath of Witness

The rule that witnesses in both civil and criminal proceedings should give their evidence after taking some form of oath is many centuries old. It is presumed that when a witness enters into such a solemn obligation to tell the truth, the effect is binding upon his conscience. The form of oath which a witness is required to take varies according to his religious beliefs, and is laid down in s. 2. Oaths Act, 1909.

(i) Any oath may be administered and taken in the form and manner following:

> The person taking the oath shall hold the New Testament or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words, "I swear by Almighty God that . . ." followed by the words of the oath prescribed by law.

(ii) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question: Provided that in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

It is of interest to note that no particular words have been prescribed by law to follow the words, "I swear by Almighty God." Courts differ slightly as to the form of Oath they have adopted, but there seems to be a fairly general use of the following: "I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth."

It has been held that it is a matter for the witness to object to the form of oath if he so desires, and not for the Court to inquire what form of oath he desires to take. (*R.* v. *Palm* (1910), 4 *Cr. App. Rep.* 201.)

The underlying principle appears to be that the oath taken by the witness must be considered by him to be binding upon his conscience. Christians are sworn on the New Testament with the head uncovered; Jews on the Old Testament with the head covered; Mahomedans on the Koran. Provision is made by s. 1 of the Oaths Act 1888 for people who have no religious belief, or to whom the taking of the oath is contrary to their religious belief. Such persons are required to 'solemnly, sincerely, and truly declare and affirm' to tell the truth (etc.).

In any proceedings against a person for an offence, the courts may receive the evidence of children of tender years, although they may be too young to take the oath. In such cases the court must be satisfied that the child is of sufficient intelligence and understands the duty of speaking the truth. Such evidence must be corroborated. (S. 38 Children and Young Persons Act 1933.)

The words of the Commandment, "Thou shalt not bear false witness against thy neighbour" were given statutory effect in the Perjury Act 1911. This statute consolidated the law as to perjury, and it is a misdemeanour for any person lawfully sworn as a witness (or as an interpreter) in a judicial proceeding wilfully to make a statement material in that proceeding which he knows to be false or does not believe to be true. It has been mentioned that persons having no religious beliefs may affirm (s. 1 Oaths Act 1888). It is provided by s. 15 (1) Perjury Act 1911 that the form and ceremonies used in administering the oath are immaterial if the Court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him. Moreover, s. 15 (2) provides that 'oath' includes 'affirmation' and 'declaration.'

There are few cases where the conflict of evidence is due to deliberate perjury. In some cases it is due to imperfect observation or failure of memory. In others, people are so conceited that they are convinced they *cannot* be wrong.

4. Examination of Witnesses

(*a*) *Evidence in Chief*

Having been called into the witness-box and having taken the oath or affirmation, the witness is required to give the court his own account of the facts in issue and relevant to the issue; that is, evidence relevant to the *question as to* whether or not the accused has committed the offence with which he is charged. In order that he may be assisted, and his testimony presented in proper sequence and in accordance with the laws and rules of evidence, it is usual for an advocate to put to the witness a series of questions. This part of the evidence is referred to as 'Evidence in Chief' or 'Examination in Chief.'

Certain important factors have to be considered when a witness is giving his evidence in chief, not the least important of which is that he *must not* be asked any 'leading question,' *i.e.*, he must not be asked a question which will put into his mouth the answer it is desired he should give. The primary function of a witness is to give his own account of the facts. There are, however, certain instances where an advocate may 'lead' his witness, *viz.*:

(*a*) when the matter being given in evidence is not disputed by the opposing side;

(*b*) when matters are being introduced, a witness may be led up to the point when he reaches the actual issue (*R.* v. *Robinson*, 61 *J.P.* 520).;

(*c*) when a witness is called to contradict another he may be asked directly (*Courteen* v. *Touse*, 1 *Camp* 43 *N.P.*);

(*d*) when a witness has already described a person, that person may be pointed out to him in court, and he may be asked in direct terms if that is the person he meant (*R.* v. *Watson*, 2 *Stark N.P.* 116);

(*e*) where the court has allowed a person to be treated as a hostile witness;

(*f*) where, on a trial for a sexual offence, a female witness is embarrassed, she may be asked a leading question to supplement her previous answers (*R.* v. *Hodgson*, 18 *Cr. App. Reps.* 7).

Leading questions may also be put to a witness in cross-examination.

Hostile Witness

It is usual in criminal cases for statements to be taken from witnesses who are to be called to give evidence. For reasons which may not be apparent, a witness may give evidence in direct opposition to that which he has volunteered in his original statement. In such

circumstances, application may be made to the court to treat such a person as a 'hostile witness.' If the application be granted, questions may be put to the witness to test his veracity. He becomes, in fact, a witness for the other side and may be cross-examined.

The court will not allow a witness to be treated in such a manner merely because he turns out to be a poor witness and fails to bear out the statement he has made. The bench must be satisfied that he is definitely adverse, and is giving evidence against the side which called him. His attitude in the witness-box, and the manner in which he answers counsel's questions, will influence the Judge or the Justices.

The decision whether or not a witness may be treated as 'hostile' is one upon which the Judge may exercise his absolute discretion (*Rice* v. *Howard*, 16 *Q.B.D.* 681).

The procedure to be adopted in dealing with 'hostile witnesses' is laid down in s. 3 Criminal Procedure Act 1865:

> A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may in case the witness shall in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony: but before the last-mentioned proof can be given, the circumstances of the proposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

When the court has allowed a witness to be treated as hostile, and the unsworn statement he has made is put to him under the terms of section 3 above, the contents of that statement are admissible only as to the credibility of the witness. It is not evidence against the accused. The jury must not be directed that the sworn testimony may be disbelieved, and the unsworn statement substituted for it (*R.* v. *White* 1922, 17 *Cr. App. Reps.* 60).

The evidence of a witness who has been treated in this manner is generally considered negligible in value (*R.* v. *Harris*, 20 *Cr. App. Reps.* 144).

Hearsay

Laymen giving evidence before our courts usually find difficulty in appreciating why certain portions of their evidence are rejected. They see *no reason* why certain information they have received, probably from a perfectly reliable source, should not be admitted. Generally speaking, however, the courts in this country will not allow a witness to give evidence of any matter which is not within his own knowledge. He cannot repeat what someone else has told him, nor can he give evidence of conversation that took place out of the hearing of the accused. This is not a matter of law; it is fundamental principle—a matter of common sense. It has been mentioned that the courts will not accept evidence which is not on oath (or affirmation), and under the heading of 'Cross-examination' it will be seen that a witness who gives evidence must be available for cross-examination by the opposing side. To permit a witness to give hearsay evidence would be contravening these two basic laws of evidence.

There are, in addition, many other obvious reasons why 'hearsay' must be rejected. While some information may have been obtained from a credible source, there is always the probability that it may be mere gossip or rumour. There is, moreover, always a tendency in human nature to exaggerate and embellish. On the other hand, in repeating a conversation, vital portions may be unwittingly omitted. Added to these reasons are the obvious opportunities afforded an untruthful witness to introduce false evidence.

Like most rules it ha veral important exceptions. Hearsay evidence may, subject to th ng of the Courts, be admitted in the following cases :

(*a*) When the statement was made in the presence of the accused;
(*b*) Admissions and confessions ;
(*c*) Depositions of persons dangerously ill, etc., may be read at the trial under certain circumstances ;
(*d*) Dying declarations ;
(*e*) Expressions of feeling, when bodily or mental condition of a person is material, and
(*f*) Recent complaints made by the prosecutrix in sexual offences against females.

Refreshing Memory

It has been seen that a witness can only speak of facts within his own knowledge unless he is an expert and can give expert opinion. In order to refresh his memory, however, a witness may be allowed to refer to notes or documents made by himself at the time of, or shortly after, the incident of which he is giving evidence (*R.* v. *Layton*, 41 *J.P.* 134). It would appear that a witness is not permitted to read his evidence but may merely use his notes to refresh his memory. The court will not grant permission to refer to such notes unless satisfied that they were made whilst the facts were fresh in the memory of the witness.

The fact that a witness has used a document to refresh his memory will not make the document evidence (*Payne* v. *Ibbotson*, *L.J. Ex* 341). But once a document has been referred to, the opposing side is entitled to see it and cross-examine upon it (*Gregory* v. *Tavernor*, 6 *C. & P.* 280).

A witness may not refresh his memory by referring to a copy of a document unless the copy was made by himself, or in his presence and he knew it to be correct (*Burton* v. *Plummer*, 4 *L.J.K.B.* 53). It should be appreciated that in view of the discrepancies likely to arise in referring to copies of original notes, courts will not usually allow evidence to be introduced which has been obtained from such a source.

4 (*b*) *Cross-examination*

When a witness has been examined by the advocate for the party which called him he is then liable to be cross-examined by the opposing side. Indeed, once he has been called and sworn, even though he gives no evidence he may be cross-examined.

It has been said that cross-examination has a searchlight effect—it may show up a witness in an entirely fresh light. In the hands of a counsel a witness may be proved to have been deliberately lying, entirely mistaken, or grossly exaggerating and distorting the facts. It is the object of cross-examination to shake and discredit the witness.

It is usually an advocate's aim to put to the witness in the form of cross-examination those points which are to form the basis of his case, in order that the witness may have the opportunity of giving his explanation whilst he is still in the witness-box. The skilful cross-examination of a witness may impress a jury, and valuable evidence may be extracted from him. A witness who is not shaken may even strengthen his evidence, and appear more convincing, when subjected to a searching cross-examination.

It has been mentioned that questions may be put to a witness to test his veracity, and it would appear that he is bound to answer such questions even though it be to his detriment. There are, however, certain limits to cross-examination aimed at impeaching the credit of a witness. He is entitled to claim privilege, and thereby be allowed to refuse to answer questions relating to the following :

1. Any matter which is likely to incriminate him. (For position of defendant giving evidence on his own behalf, see "The accused as a witness.")
2. Matters tending to show he has committed adultery.
3. Communications made between husband and wife during marriage.
4. Communications between lawyer and client.
5. Matters privileged on grounds of state or public policy.

It has been held that where a witness is asked a question 'collateral to the matter in issue,' and he denies the matter suggested to him, his answer must be accepted. Evidence cannot be called to contradict him (*Harris* v. *Tippet*, 2 *Camp* 637 *N.P.*; *R.* v. *Watson*, 2 *Stark* 116). S. 6, Criminal Procedure Act 1865, however, provides an important exception to this rule :

> "A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction."

An example of the application of the rule is afforded in *R.* v. *Cargill*, 1913, 77 *J.P.* 347. In cases of rape, carnal knowledge of girls of 13 to 16 years, or indecent assault, if the complainant is asked if she has had intercourse with a certain man, and she denies such suggestions, her answer must be accepted and cannot be contradicted. The question is one which is directed at impeaching her credit as a witness, and is not relevant to the issue. If, however, she were asked whether she had intercourse with the defendant on a previous occasion, and denies such suggestion, evidence may be called to contradict her. Such evidence is material and concerns the point at issue. (*R.* v. *Riley*, 56 *L.T.* 371.)

4 (*c*) *Re-examination*

After a witness has been cross-examined, the advocate who called him may examine him further. Such re-examination must be confined to matters which have been brought out during cross-examination. New matters which may have been given in examination in chief cannot be introduced.

Leading questions are not permitted in re-examination, unless the adverse side raises no objection: they may, of course, always be asked with the permission of the court.

5. Recalling Witnesses

The Judge may allow a witness to be recalled in order that he may give further evidence or be further cross-examined.

The Judge has a discretionary power to recall witnesses at any stage of the trial and may put to them such questions as the exigencies of justice require, and the court of appeal will not interfere unless it appears that an injustice has thereby resulted. (*R.* v. *Sullivan*, 1923, 1 *K.B.D.* 47, 86 *J.P.* 167.)

6. Rebutting Evidence

Whenever witnesses for the defence have given evidence introducing new matter which could not have been foreseen by the prosecution, the Judge may allow evidence to be called by the prosecution to rebut such matters. The Judge has discretion to allow such evidence, but it has been decided that "such evidence should be limited to cases where something has arisen *ex improviso*, in the course of the defence (*R.* v. *Day*, 27 *Cr. App. Reps.* 168; *R.* v. *Harris*, 20 *Cr. App. Reps.* 86).

The procedure in summary cases is dealt with in section 14, Summary Jurisdiction Act, 1848.

7. The Accused as a Witness

If the accused decides to give evidence, two courses are open to him. He may either make a statement from the dock, in which case he does not take the oath, or he may go into the witness-box and be sworn and give his evidence like any other witness. If he adopts the former course he cannot be cross-examined, but if he gives evidence on oath he renders himself liable to cross-examination.

It is proposed to consider his position as a witness for :

(*A*) The prosecution, and

(*B*) the defence.

(*A*) The accused as a witness for the prosecution—

When charged alone he cannot be called to give evidence for the prosecution—*i.e.*, to give evidence against himself.

When charged jointly he may give evidence for the prosecution :

- (*a*) Where leave of the Attorney-General has been given to withdraw the prosecution after an indictment has been found—referred to as a *nolle prosequi*.
- (*b*) When he has been acquitted.
- (*c*) Where he has pleaded guilty, or after pleading not guilty has withdrawn his plea and pleaded guilty. (*R.* v. *Tomey*, 1909, 2 *Cr. App. Reps.* 329.)

Note: The evidence of a co-defendant called for the prosecution needs corroboration. (*R.* v. *Sparks*, 1 *F. & F.* 388) and see *R.* v. *Baskerville*, 1916, 80 *J.P.* 446, as to evidence of accomplices.

(*B*) The accused as a witness for the defence—

S. 1. Criminal Evidence Act 1898. The defendant (or his wife) may give evidence for the defence at every stage of the proceedings, whether charged solely or jointly.

- (*a*) He may only be called upon his own application.
- (*b*) If he does not give evidence, the prosecution cannot comment on that fact, but the Judge may do so—*R.* v. *Rhodes*, 62 *J.P.* 774; *R.* v. *Smith*, 1915, 84 *L.J.K.B.* 2153.
- (*e*) He may be asked any question in cross-examination though it may tend to incriminate him as to the offence charged; but—
- (*f*) he shall not be asked, and if asked need not answer, any question tending to show he has committed, or been convicted of, or been charged with any other offence, or is of bad character, unless
  - (i) proof of his having been previously convicted is admissible evidence to show he is guilty of the offence now charged, or

(ii) he has personally, or by his advocate, asked questions of the prosecution witnesses with a view to establishing his own good character, or the defence is such as to involve imputations on the character of the prosecutor or his witnesses, or

(iii) he has given evidence against any other person charged with the same offence.

The defendant cannot be examined as to previous convictions merely because one of his witnesses voluntarily makes a statement as to the defendant's character. (*R.* v. *Redd*, 1923, 1 *K.B.* 104, 87 *J.P.* 43.)

Some Judges take the view that a prisoner who has pleaded guilty should be sentenced before being called to give evidence for a co-prisoner, but the practice is not generally followed at the Central Criminal Court. (*Archbold*, 31st ed., p. 441.)

In the case of ***Stirland*** v. ***Director of Public Prosecutions***, 1944 *A.C.* 315, the House of Lords laid down certain rules governing the cross-examination of an accused person who gives evidence.

They are as follows:

1. The accused in the witness-box may not be asked any question "tending to show that he had committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is a bad character, unless" one or other of the three conditions set out in s. 1 (*f*) of the Act of 1898 is fulfilled.

2. He may, however, be cross-examined as to any of the evidence he has given in chief, including statements as to his good record, with a view to testing his veracity or accuracy, or to showing that he is not to be believed on his oath.

3. An accused who 'puts his character in issue' must be regarded as putting the whole of his past record in issue. He cannot assert his good character in certain respects without exposing himself to inquiry as to the rest of his record so far as this tends to disprove a claim for good character.

4. An accused is not to be regarded as depriving himself of the protection of the section, because the proper conduct of his defence necessitates the making of injurious reflections on the prosecutor or his witness.

5. It is no disproof of good character that a man has been suspected, or accused of a previous crime. Such questions as "Were you suspected?" or "Were you accused?" are inadmissible because they are irrelevant to the issue of character, and can only be asked if the accused has sworn expressly to the contrary.

6. The fact that a question put to the accused is irrelevant is in itself no reason for quashing his conviction, though it should have been disallowed by the judge. If the question is not only irrelevant, but is unfair to the accused as being likely to distract the jury from considering the real issues and so lead to a "miscarriage of justice" (Criminal Appeal Act, 1907, s. 4 (1)), it should be disallowed, and, if not disallowed, is a ground on which an appeal against conviction may be based.

The Problem of Parking Motor Vehicles

EXCEPT for a temporary war-time respite most senior policemen, particularly those in cities and towns, have seen the obstruction and congestion caused by parked motor vehicles grow until it has become a major problem demanding urgent attention and planning.

In tackling this problem the Police are beset with a great handicap in that most of the principal roads are unsuitable for the use of fast-travelling motor vehicles, because they were built long before it was appreciated how great would become the volume of traffic and the need of parking numerous vehicles.

By reason of prohibitive cost these roads cannot be adequately widened or improved, so the Police must fall back on the alternative of making these roads usable by traffic to the maximum degree through the installation of traffic islands, one-way streets, traffic signs, unilateral parking, parking prohibited entirely or between certain times. But this problem will not be solved solely by reporting offending motorists for obstruction or for disobeying parking signs.

Alternative parking may seem the fairest system for shopkeepers and business men since both sides of the street share the arrangement equally. In practice, however, this system has certain disadvantages. To mention but a few: movable signs have to be strongly constructed or they will soon break or need constant replacement, *e.g.* wood signs are easily broken by destructive youths. If constructed of steel they have to be lodged in a deep socket for adequate support. In rainy weather these sockets fill with water and in cold weather freeze, thereby making the signs immovable until a thaw arrives. Again, motorists and shopkeepers never seem to remember which are odd or even dates for parking; and lastly, but by no means least, they are a constant headache to the unfortunate policemen who have to remove them daily from one side of the road to the other.

If it is decided to prohibit parking on one side of a street, then most shopkeepers and business men on that side of the street where parking is prohibited will undoubtedly say that they have been victimised. To obviate such complaints a proviso is usually inserted in the prohibition that shopkeepers may stop their vehicles on the prohibited side only when loading or unloading outside their premises. Such a proviso defeats the advantages of one-way parking and provides great latitutde for the shopkeeper who, when approached by a police constable, invariably replies, "I'm loading or unloading," and may continue to do so at his leisure without risk of being reported for such action.

Again, one-way parking can be dangerous from the road-safety viewpoint. Such parking means that one side of the street is packed from end to end by parked motor vehicles, and pedestrians must perforce emerge from between these vehicles even at pedestrian crossings.

Recently the writer visited the scene of an accident at a pedestrian crossing. Large vehicles were parked on both sides of the crossing so that pedestrians were unable to see traffic approaching from either

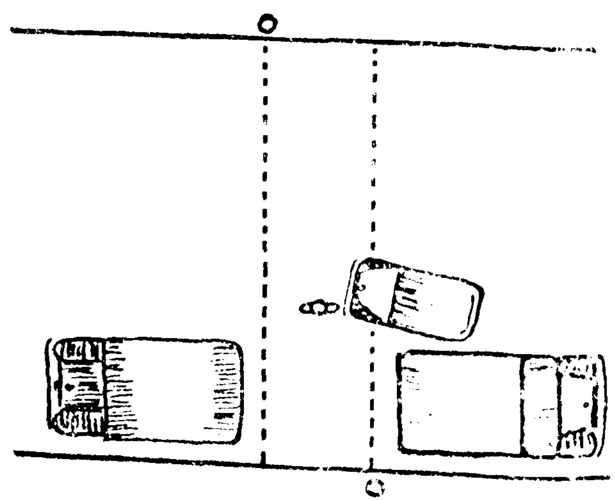


FIG. 1.—Woman killed on pedestrian crossing

direction. A motorist was driving at about 20 miles per hour on the crown of the road towards the crossing. He saw no pedestrians on the crossing. Then a woman suddenly appeared from between the parked vehicles on his nearside. As she took a few steps forward on the crossing she looked to her left. The driver saw her and swerved to his right even as he applied the brakes, but the woman walked into the rear offside door of his car and was killed.

The important part about this accident was that the victim had walked a considerable distance specifically to use the pedestrian crossing. Yet the motorist was travelling at a reasonable speed and pulled up within a car length. Obviously the victim should have looked both ways before walking from between the vehicles, and yet undoubtedly the

parked vehicles were the primary cause of the accident in that they shut out the view of approaching traffic from the victim, and also obscured the victim from the motorist's view until too late (see Fig. 1.).

Without over-emphasising this theme, children are also instructed to use pedestrian crossings; but close parking on both sides of a crossing makes their use dangerous to pedestrians and motorists. Perhaps a law prohibiting parking within 20 feet of a pedestrian crossing on either side might prove effective in modifying this particular traffic danger.

So congested are some streets with one-way parking that it is now no uncommon sight to see double parking, that is to say usually a lorry or van stationary on the crown of the road and waiting for other vehicles to move before pulling in to the vacant space (see Fig. 2.). In this connection it is obvious that if a driver has to deliver or pack goods, particularly if these are cumbersome, he will park his vehicle as near the shop entrance as possible, irrespective of being near a

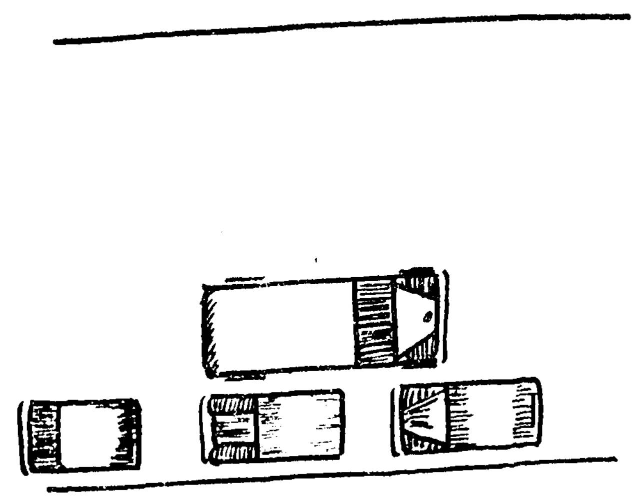


FIG. 2.—Double Parking

pedestrian crossing. Incidentally to have a pedestrian crossing immediately opposite a shop doorway or entry to a building is an invitation to business vehicles to park close to the crossing.

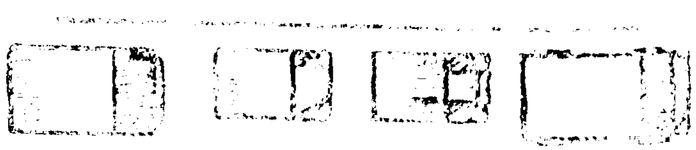
What is the solution to this parking problem? The writer suggests that in each Road-Safety Department there should be a special section under another officer and known as the Parking Department.

Some authorities seem woefully lacking in imagination concerning this problem. If motorists are prohibited from parking they will ask the Police, "Where may we park?" The writer knows of some towns where the car parks are the same as they were 15 years or more ago.

These fill rapidly, and often the Police are then unable to suggest alternative sites for motorists to park. Such inadequate planning is unfair both to motorists and patrol policemen.

It will be the responsibility of the officer in charge of the Parking Department to study this problem and suggest suitable alternative parking sites. As an example of poor planning there is a busy street in a certain town which during the hours of 8 a.m., to 6 p.m. is overburdened with parked vehicles. Twenty yards distant from the heart of this street is a vast space behind a cinema which was intended as a park for the cars of cinema patrons. This park is usually empty during the hours 8 a.m. to 6 p.m., and this space could accommodate all the surplus vehicles using the busy street. An attendant at this site could more than cover the cost of rent in collecting modest fees as well as safeguarding the vehicles.

The police officer in charge of the Parking Department and his assistants could supervise car park employees, who should be paid a reasonable wage and be provided with a distinguishing uniform.



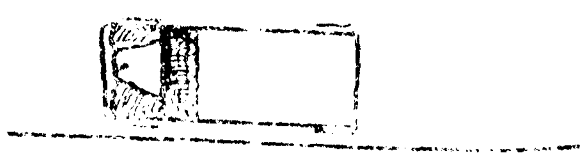


Fig. 3. Such parking reduces road width to minimum

Before new business ventures such as cafés, petrol stations, and new places of entertainment, are opened, the Police should be notified by the appropriate department, and the Parking Officer should view the intended site. If that officer was then of the opinion that it would be hazardous for vehicles to park outside the site, he could inform the intending proprietor and perhaps be able to suggest (for instance at the site of an intended café) a place where drivers of heavy vehicles could park such vehicles with safety and without complaint by residents.

Again, in the case of other business ventures, he may be able to suggest loading bays, or a loading or unloading site at the rear of a less congested part of the premises.

On all new estates in the course of erection the Parking Officer should be consulted concerning the provision of a parking site near the shopping centre.

In connection with this important subject could not provincial police officers scheduled to deal with this problem receive a course of intensive instruction in the Metropolis, where parking problems and traffic control are a major issue?

Lastly, the writer suggests that this problem may be defeated, or at least much relieved, by the provision of car parks in the following manner. It is suggested in connection with the development of the Atom and H bombs that safety from these weapons can only be attained by underground shelters. In the centres of our principal cities and towns probably large underground shelters will be built or excavated. Should such shelters never be used for their planned purpose then they could be in daily use for parking vehicles. Their cost to the State and Local Authorities could be refunded by the parking fees of motorists. The shelters would thus serve a twofold purpose.

That these shelters will be constructed is perhaps inevitable. Will the State then consider them functioning as useful assets of society rather than exclusively for a purpose which one prays may never materialise?

MENTOR.

Road Safety in Trinidad and Tobago

By Chief Inspector E. Maeer

Accident Prevention Dept., Sheffield City Police

IN December 1944, by arrangement with the Colonial Office, I was seconded from my own Force to the Colony of Trinidad and Tobago in the British West Indies where I was appointed Superintendent of the Traffic and Communications Branch of the Police Force.

When I first became interested in the post I must confess that I had only a vague idea of the geographical situation of Trinidad and of the conditions I would find there, so perhaps better-informed readers will bear with a brief description of the Colony.

Trinidad, land of the hummingbird, is an island of 1,860 square miles—about the size of the county of Lancashire—and lies 10 deg. north of the Equator. It is only seven miles from the coast of Venezuela on the South American Continent.

Tobago, or "Robinson Crusoe Island," lies 20 miles north of Trinidad and is 27 miles long by 7 miles wide.

The population of this English-speaking colony is about 560,000 and because of the island's strategic geographical position, it is very cosmopolitan although Negroid and East-Indian types predominate. The climate is tropical, but not overbearingly hot, and abundant rains produce luxuriant vegetation—particularly beautifully coloured flowering trees.

Trinidad's main industry is oil, but it is perhaps better known for its famous Pitch Lake, one of the natural wonders of the world. Agriculture also plays an important part in the economy of the Colony. Sugar and rum from the sugar cane, copra from the coconut, cocoa and grapefruit are exported in large quantities.

Although Tobago more or less retains its natural tropical agricultural characteristics, Trinidad is highly commercialised and in common with other parts of the world has increasing traffic difficulties. High-powered cars and trucks, old and modern buses, trolley vehicles, single-deck open-sided trams, etc., intermingle with various types of animal-drawn carts and cycles to create a very real traffic problem.

Of the 13,000 motor vehicles registered in the Colony, more than 1,000 are taxi-cabs—the majority high-powered North-American types. As a result there is intense competition among their drivers and taxi fares are extremely low. One can travel from the capital, Port of Spain, to San Fernando, a distance of almost 40 miles, for a dollar (4s. 2d.) provided you are willing to share the conveyance with other passengers. This is one of the factors which encourage high speeds on roads which, in the main, are unsuitable for modern traffic.

Although, as in this country, traffic growth has far out-stripped road construction programmes, the roads in Port of Spain are well laid out on the gridiron principle. Unfortunately, however, they are too narrow and in order to combat the resultant congestion a system of one-way streets has been introduced. Roads on the outskirts of the towns and in the country districts are narrow and winding. The abundance of pitch in the Colony ensures that the surfaces are comparatively good and free from dust, but in many places they are undulating and dangerous—particularly in wet weather.

There is a great lack of footpaths in the rural areas and this contributes considerably to the high accident rate. In 1948, 57 persons were killed and 2,520 injured in road accidents in Trinidad and Tobago.

Accident investigation follows the same lines as in this country, but is more detailed because *all* accidents, however trivial, must be reported to the Police. It is *not* sufficient to exchange names and addresses even in non-injury accidents. The law is also based on English law with the necessary variations to meet local conditions.

All driving permits expire on December 31st each year. Applicants for a driving permit must be of good character. The Licensing Authority

(The Commissioner of Police) may refuse to renew a driving permit if the applicant has, within the preceding three years, been convicted of manslaughter, driving under the influence of drink, reckless or dangerous driving, or repeated offences against any section of the Road Traffic Ordinance or its supplementary regulations.

A second conviction for driving under the influence of drink permanently disqualifies a driver from holding or obtaining a driving permit. A third conviction for dangerous driving means permanent disqualification.

A provision used fairly frequently is one which gives power to suspend temporarily the permit of any driver charged with manslaughter, driving under the influence, or reckless or dangerous driving, pending the determination of the charge.

To some readers these may appear severe penalties, but they certainly make a driver appreciate the value of his licence to drive a lethal weapon on public roads.

One or two other interesting provisions are: Parking within 30 feet of a corner or 10 feet of a fire hydrant is prohibited. It is an offence to drive at night without two headlights; sound a horn after 9.0 p.m. in a municipal area; or overtake a stationary tramcar while passengers are boarding or alighting. Overtaking other traffic when rounding a corner, at a road intersection, at forks, on the brow of a hill, or on a hump-backed bridge *is a distinct offence from that of careless driving.*

A truck, as a goods vehicle is termed, must not carry passengers other than the driver and two loaders without a permit from the Licensing Authority. In the country districts, travelling by truck is a prevalent method of conveyance, but the high accident rate arising from this mode of travel justifies strict control over drivers and vehicles.

Broadly speaking, the chief accident causes are the same as in this country: excessive speed (having regard to the conditions); pedestrians crossing the road without due care, etc. There are, however, one or two additional faults which are very prominent. One is the habit of driving with one hand on the wheel and the other on the roof of the car. It seemed an incomprehensible method until I tried it myself and found that it produced a pleasantly refreshing draught around the body. It will be appreciated that in a warm climate it is difficult to eradicate the fault despite persistent propaganda.

Parking too far from the kerb is another prevalent habit. It is primarily attributable to the fact that in many districts kerbs are constructed high enough to form a bank when the heavy rains transform the streets into miniature torrents, but the practice continues in places where it is unnecessary.

Most drivers give indistinct signals, but this is due not to lack of knowledge or safety education so much as to natural lethargy on the part of drivers. In addition, it is quite common to see a driver's hand shoot out to wave to a friend or point out some sight, just as you are about to overtake. Although you may be tolerably certain that the gesture is not intended as a signal, it is advisable to err on the side of caution.

Cyclists are a serious problem. As in other parts of the world, they refuse to recognise that theirs is the most vulnerable machine on the road and that they are exposed to greater injury risks than other road-users. Threading through other traffic, riding several abreast and on the wrong side of the road are everyday faults. The size and weight of the burdens they carry have to be seen to be believed. It is also quite common to see cyclists in wet weather carrying an umbrella, newspaper or handbag, over their heads as a protection against the rain!

On one occasion my native driver had great difficulty in avoiding a cyclist who 'cut in' on the near-side as we were taking a left-hand turn. By good fortune he managed to avoid a crash; then he started to curse the cyclist fluently, finishing up cryptically with "Man, d'ye na want to see Christmas agen?"—an expression which struck me as singularly appropriate.

Two other expressions which intrigued me were "bouncing" another vehicle instead of colliding with it; and "mashing" the brakes or clutch instead of applying them.

As in this country, accident prevention policy is based on the three "E"s—Enforcement, Engineering and Education. The first is carried out by the semi-military police force of some 1,400 officers and men. An idea of the energy with which the problem is being tackled may be gathered from the fact that in 1948 there were 12,586 convictions for traffic offences. The procedure for accident investigation and prosecution of traffic offences is the same as in this country, but a special Traffic Court has been established in Port of Spain. Both verbal and written cautions are issued as and when justified.

Road patrols operate throughout the Colony and they have now been supplemented by 'Jeeps' and similar type vehicles, as well as motor cycles. The former are particularly useful on the narrow winding roads in rural districts and have the added virtue of being ideal for emergency police work, since they can travel in places inaccessible to other vehicles.

Speed controls with stop-watches are established on roads which have bad records for accidents or speeding. If the success of this controversial method of law-enforcement can be judged by the number of breaches detected, it is certainly justified. Naturally, the operation of the controls and the proximity of road patrols is soon known, and the 'Bush Telegraph' is operated by headlamps and other signs!

Cycle and foot patrols share in the responsibility for traffic law

enforcement, but there is a greater tendency to leave it to the traffic branch than in this country.

Engineering policy is the responsibility of the Public Works Dept. Traffic islands, roundabouts, traffic signs, Cat's eye studs, white lines and similar devices are widely used and as far as possible the recommendations of the Report of the Departmental Committee on Traffic Signs are followed. 'Stop' is substituted for the word 'Halt' on Major Road Ahead signs.

Although the volume of traffic has far out-stripped road-building there is a general desire to improve conditions to meet present-day requirements. The advantages of dual carriage-ways and cycle tracks have now been recognised, but modernisation progress is slow because of the limited depth of the Colony's purse.

One of the most serious problems is car parking, but considerable progress has been made, and both the Authorities and the public realise that proper parking is a definite contribution to both road safety and general convenience. One of the largest commercial concerns gave a valuable lead by acquiring a car park accommodating 40 vehicles for the use of its customers, and it is hoped that this example will be followed by other progressive firms who realise the need for enterprise in relieving the congestion caused by post-war increase in traffic.

Incidentally, unilateral parking is so arranged that vehicles are left on the shady side of the road during the morning and changed over at 1 p.m., thus avoiding leaving them in the powerful sunlight longer than necessary.

Road Safety education in Trinidad and Tobago suffers from the same obstacle as here—apathy on the part of the public—and I soon realised the need for enlisting the co-operation of all classes of road users and co-ordinating their activities.

The Road Safety Association of Trinidad and Tobago was formed in April 1946, and I had the honour of being its first Chairman. It was the first body of this kind in that part of the world, but its usefulness has been appreciated by neighbouring colonies and similar organisations have been created in other parts of the West Indies. In the first year we relied on voluntary subscriptions for carrying out our policy, but the Association is now officially recognised by the Government of the Colony and contributions are made on a dollar-for-dollar basis of voluntary contributions up to a limit of $5,000 per annum. The idea that a code of rules of behaviour is as essential on the road as on the sports field was appreciated by the Association and, in consequence, an amended version of the English Highway Code has been widely circulated.

In order that the Association could keep abreast of contemporary developments in Road Safety work, application was made for membership of the Royal Society for the Prevention of Accidents and its opposite number—the National Safety Council of America. Both organisations co-operated and gave valuable assistance.

Not all the mechanical aids and other propaganda facilities used by Road Safety organisations in this country were available and we relied mainly on propaganda from the local broadcasting station, the Church, Press, films, slides, posters and pamphlets. A Safe Driving competition was introduced in 1948 and the idea of qualifying for an award made a great appeal to the native driver.

I was particularly impressed by the generous support of the Education authorities. Road Safety lessons now feature prominently in school curricula, and it is already obvious that they will be of substantial benefit in the future.

There are several other aspects of the road traffic problem which could be discussed if space permitted, but the foregoing observations cover the main points from the practical police point of view.

As in every other civilised community, the dual problem of keeping death off the road and ensuring reasonable convenience in the use of mechanically-propelled vehicles has become one of the most important features of police administration. As elsewhere, it is being tackled as vigorously as money and man-power allow, but the growth of traffic inexorably outpaces progress in highway engineering and accident-prevention programmes, and there is still much to be done.

Provincial Police Medals

By Inspector C. W. TOZER
Portsmouth City Police

OWING to the small number of awards available for exclusive issue to members of the British Police Forces, and to the strict conditions which are imposed upon those which do exist, it is not surprising that a number of Provincial Forces have issued their own medals. Although I intend to deal primarily with these Provincial awards, it will be necessary to consider the official medals to reveal the need for the unofficial ones.

The official medals which have been authorised for issue to members of the regular Police Forces in Great Britain are :

1. Queen Victoria's Police Jubilee Medal 1887.
2. Queen Victoria's Police Diamond Jubilee Medal 1897.
3. King Edward VII Police Coronation Medal 1902.
4. King Edward VII Police Medal (Scotland).
5. King George V Police Coronation Medal 1911.

6. The Kings Police Medal 1909.
7. The Constabulary Medal (Ireland).

Most of Nos. 1, 2, 3, and 5 were issued to members of the Metropolitan and City of London Forces, but a certain number were issued to provincial officers who were on duty in London for the celebrations, and to some Chief Officers of Police.

The Kings Police Medal was established by Royal Warrant on July 7th, 1909, for award to members of Police Forces (and Fire Brigades) in respect of one or more of the following qualifications :

(*a*) Conspicuous gallantry in saving life or property or preventing crime or arresting criminals.
(*b*) Specially distinguished records in Administration or Criminal Investigation Department.
(*c*) Success in organising Police Forces or Fire Brigades or maintaining organisation under special difficulties.
(*d*) Special services in dealing with serious or widespread outbreaks of fire or crime.
(*e*) Valuable political or secret services.
(*f*) Special services to Royalty or the Heads of Foreign States.
(*g*) Long Service—but only when distinguished by exceptional ability or merit.

From its inception until 1916 the ribbon was blue with white edges. In 1916 it was altered to white with two broad blue stripes. On December 12th, 1933, the award for Gallantry ((*a*) above) was separated from the other conditions and became known as 'The Kings Police Medal for Gallantry.' A thin red stripe in the centre of each of the white stripes of the existing ribbon was designated as the ribbon for the new award, and the design of the medal was slightly altered. The existing ribbon was retained for the medal when awarded for qualifications (*b*) to (*g*), and this is usually referred to as 'The Kings Police Medal for Distinguished Service.'

The number of awards in each year is limited by the Royal Warrant. The award of the medal was extended to India, the Dominions and Colonies until such time as they introduced individual awards (*e.g.* The Indian Police Medal, The Burma Police Medal, The Colonial Police Gallantry Medal, etc.). The Gallantry award is given without regard to rank but, in practice, the Distinguished Service award is usually given to the higher ranks only. The award may be forfeited for certain serious misconduct, and may be restored by H.M. the King.

It will be clear from the above that prior to 1909 there was no official award for Gallantry or Long Service, and that after that year the Kings Police Medal could be awarded for Long Service only when 'distinguished by exceptional ability or merit.' The British Police Service is, I believe, the only uniformed body in the Empire which does not have some recognition for long service. Also before 1909 there was no bravery award exclusively for Police officers. It is not surprising therefore that a number of provincial police authorities took it upon themselves to issue local awards for bravery and/or long service.

The following is, I believe, a complete list of the awards which have been made locally:

Liverpool

A specimen of a silver medal awarded in 1851 for Meritorious Service has been seen by the writer, but no official record can be traced.

In 1852 a silver medal was issued to commemorate the visit of Queen Victoria to the City. The ribbon was blue, with red edges and a thin red centre stripe.

In 1897 the present 'Good Service Medals' were instituted to commemorate the Diamond Jubilee of Queen Victoria. The medal in silver was awarded to Inspectors and other senior officers who had:

(*a*) twenty years' or more approved service on June 20th, 1897, with unblemished records, or

(*b*) were serving as *officers* on June 20th, 1887, and had continued to serve until June 20th, 1897, with unblemished records.

A bronze medal was granted to all sergeants and constables who had twenty years' or more service (approved) on June 20th, 1897, with unblemished records.

After these first awards, the medals were continued for specially good service—the bronze medal for 20 years' service free from punishment as laid down in Police Regulations, and the silver medal similarly for 25 years' service. A bar is issued to the silver medal for each additional five years' service.

The original ribbons are interesting, being, I think, the first to be issued in this country with diagonal stripes. The 20-year service ribbon was blue, with red diagonal stripes, and this ribbon was reversed for the 25-year award to show a red ribbon with blue diagonal stripes. The ribbons were later replaced by the present, more conventional, design, the 20-year ribbon being blue with a red centre edged with white, and the 25-year ribbon being red with a blue centre edged with white. Although unauthorised, these ribbons are worn on the left breast in the Force.

Manchester

The Manchester City Police Bravery Medal was authorised in February, 1894, for acts of outstanding bravery. A bar can be awarded for an additional act. Seventy-one medals and four bars have been awarded up to August, 1949. The ribbon is crimson.

Windsor

Windsor Borough Police Coronation Medal 1902 was quite unique

Windsor being the only force to issue its own medal for the Coronation of King Edward VII. The ribbon was red, with green edges.

Reading

Reading Borough Police Bravery Medal was instituted on April 26th, 1904, for saving life or for special bravery. The ribbon is blue with a white centre stripe. The award is still current, but no award has been made for some years.

Cardiff

The Cardiff City Police Bravery Medal came into being on May 11th, 1908, for acts of bravery. The award is unique in that it carries a non-pensionable allowance of 2s. per week. The ribbon is most unusual, being gold with three red chevrons woven thereon. When the ribbon is worn without the medal only one chevron is shown. The design is taken from the City's coat-of-arms.

Aberdeen

The Aberdeen Constabulary Medal was instituted in 1909 for members of the Force who specially distinguish themselves in the execution of their duty. The ribbon was dark blue, and the award was discontinued in 1936.

Bolton

Bolton Borough Police Long Service Medal was instituted on July 30th, 1913, for 25 years' service free from misconduct. In 1931 the qualifying period was reduced to 20 years. A bar is awarded for each additional five years' service. The ribbon is blue with two red stripes.

Cambridge

Cambridge Borough Police Long Service Medal was first issued in 1913, and was withdrawn the following year. It was awarded for 25 years' service. The ribbon was almost identical with that of the Police Coronation Medal 1902—red, with a blue centre stripe.

Reigate

Reigate Borough Police Good Service Medal. Instituted 1913 and discontinued in 1943 when the Force was amalgamated with the Surrey Constabulary. It was given for 25 years' service without adverse record. The ribbon was medium blue.

Lincoln

Instituted on June 17th, 1926, the Lincoln City Police Long Service Medal was awarded for 20 years' good service without default. It was discontinued on October 5th, 1941. The ribbon was dark red with a green centre stripe.

Bristol

Bristol City Police Long Service Medal was instituted on December 8th, 1926, for 17 years' exemplary service. A bar is awarded for each additional five years' similar service. The ribbon is dark red with a dark green centre stripe.

Exeter

The Exeter City Police Medal was instituted in 1928, for 17 years' service combined with efficiency and zeal, and without default. A bar was issued for each additional five years' service. The medal may be withdrawn by the Chief Constable if any default is subsequently recorded against the holder. Issue has been suspended since 1939. The ribbon is white, with two green stripes.

Rochdale

The Rochdale Force is the only one with three current medals. The Rochdale Borough Police Bravery Medal was first issued in 1928 for acts of outstanding bravery. The ribbon is red. There are two Long Service Medals, a silver one for 25 years' unblemished service and a bronze medal for 20 years' similar service. Both the latter awards were instituted in 1930. The ribbon of the 25-years' medal is red with two broad blue stripes, and the 20-years' ribbon is blue with a broad red stripe in the centre.

Plymouth

The Plymouth City Police Bravery and Good Service Medal was instituted on April 16th, 1930. It is awarded for conspicuous bravery or for 17 years' good service without default and subject to continued zeal and efficiency. A bar to the medal may be awarded to a member who having once qualified, again qualifies either by reason of conspicuous bravery or good service. The Good Service award may be withdrawn if the holder is found guilty of any offence under Police Regulations or fails to maintain his zeal and efficiency. The ribbon is red, with two blue stripes towards the edges, and a narrow blue stripe in the centre.

Brighton

Brighton Borough Police had a Meritorious Service Medal, but very little information is available about it. The medal was 22ct. gold and the ribbon royal blue. It is believed to have been instituted before 1900 as a reward for acts of bravery, and the last award was made on September 22nd, 1920.

Norwich

There is no actual record of a medal being issued for the Norwich Force, but a firm of military tailors in the City do recall it, and it is believed to have been issued between 1902 and 1914 to commemorate

a Royal visit. It is said to have been known as the 'Mousehold Medal.' The writer has a piece of ribbon said to belong to the award, and it is red with a blue stripe towards one edge and a green stripe towards the other, and a narrow yellow stripe in the centre.

Special Constabulary

Special Constables were not recognised by any award officially until August 30th, 1919, when the Special Constabulary Long Service Medal was authorised 'to reward the faithful and devoted service rendered by members of the Special Constabulary during the Great War.' The qualification was nine years' service—one year counting as three in time of war—and not less than fifty duties performed per annum. A bar 'Great War 1914-1918' was issued to distinguish the award from service in peace time. No such bar has been issued for World War II. Bars are issued for each additional ten years' service. Broken periods of service may be aggregated to qualify for the medal. The ribbon is white with a broad red centre, and a black stripe in the centre of each portion of white. Lack of earlier official recognition led to provincial forces providing their own awards.

Birmingham

Birmingham City Police issued two medals for their Special Constabulary, both in 1917. The Birmingham Special Constabulary Water Guard Medal to members who guarded the City's water supply at Rhayader in Wales (ribbon, blue, with narrow stripes of white/red/yellow/red/white in the centre) and the Birmingham Special Constabulary Long Service Medal for service during the Great War (ribbon, pale blue).

Coventry

Coventry Special Constabulary Medal issued for service in the Great War. Ribbon, half red, half green, with a narrow yellow stripe in the centre.

Edinburgh

Edinburgh Special Constabulary Medal, for service in the Great War. The bronze medal hangs from a brooch without ribbon, but when the medal is not worn, a ribbon, half black, half white, is worn to denote the award.

Cardiff

Cardiff Special Constabulary Medal was issued for service in the Great War to those who joined before December 31st, 1917, and served for six months or more. The ribbon is blue with narrow red edges and narrow yellow centre stripe.

Metropolitan

The Metropolitan Special Constabulary Medal is issued for service in the Great War. The bronze medal was suspended from a brooch and there was no ribbon.

The writer would like to express his grateful thanks to Chief Constables, officials of Local Authorities, and to colleagues who so willingly assisted him to obtain the information contained in this article.

Gold

By T. J. CLOGGER
Assistant Superintendent, Tanganyika Territory Police

THROUGHOUT history there has always been a lust for gold. The chaotic condition of the world's economy to-day has succeeded in creating an unprecedented black-market demand for gold in any shape or form. Despite the hoarding of gold at Fort Knox there is more of the precious metal on the move on the free markets and the illegal bourses of the Continent than ever before.

The flow of stolen or illicitly obtained gold from producing countries is considerably augmented by the gold that was looted by Hitler's hordes from the occupied territories—a large portion of which was never recovered; and by the addition of the gold that was freely distributed by the agents of all combatant nations during both World Wars.

During this year the Government of the Union of South Africa, one of the biggest gold-producing countries in the world, stated:

"The high prices obtainable for gold in free markets overseas have given a strong impetus to the smuggling of gold jewellery out of the Union. It is largely as a result of the increased demand on the part of this lucrative smuggling trade that the number of jewellers who obtain gold from the Mint for the manufacture of gold jewellery has increased from ten in 1939 to more than 200 in 1948."

In Britain, gold worth £9 to £10 an ounce to the criminal receiver is to-day fetching £30 an ounce on the black bourses of the Continent. The smuggling group who cater for this demand, and which is international in character, has ramifications all over Britain through which a steady supply of gold reaches a central clearing house for smuggling by couriers to Europe—usually Belgium and Tangiers. At these centres there is an abundance of black-market currencies of all countries, and hence, cash transactions present no difficulties to the brokers.

A recent case illustrating the methods used by the smuggling ring is that of one Coppin, the captain of the steamer *Saphir*, who was

apprehended by the Police when attempting to smuggle out of England on his ship, among other things of considerable value, bars of fine gold, gold sovereigns and half-sovereigns to the value of thousands of pounds. It will be appreciated that this is only one case where the operator has been arrested—how many consignments have gone before?

History

Pliny and Strabo mention alluvial gold mining, and figures given in their works indicate the high yearly output of some 200,000 ounces Troy from the stream-beds of Spain.

Placer gold mining was practised throughout the Middle Ages wherever any small concentration occurred. Very cheap or even slave labour made this possible, and in India peasants were, and still are, willing to work with the panning dish for days in the broiling sun, in order to recover a few grains of the precious metal. Before the discovery of America the natives of the southern and central portions of the continent were expert in gold mining with the batea, the South American miner's pan.

The first white man to wash gold in America did so at Panama in 1502, during Columbus' fourth voyage of discovery. About 1537 mining was commenced by the Spaniards in Colombia after some years had been spent in search of the golden city of Manoa with its legends of fabulous wealth, and in winning easy gold by pillaging the golden ornaments from Indian graves.

This marked the beginning of the great days of the Spanish Main, when laden treasure ships plied to and fro between Spain and her colonies. The output of gold from the Spanish colonial areas increased by leaps and bounds, especially after the introduction of negro slave labour in the third decade of the seventeenth century, and continued to lead the world until the great gold finds of the nineteenth century.

Occurrence

An exceedingly important source of gold is deposits of placer or alluvial type. These deposits are derived from the weathering and disintegration of the primary gold-bearing rock. Gold is found in the residual deposits formed on the outcrop of weathered gold-bearing rock.

The great placer deposits, however, occur in the valleys, and may be of recent or ancient date, and may be found at the surface or at a great depth. Such placer deposits are exemplified by the conglomerates of the Rand of South Africa, the shallow placers of Urals and Siberia, India, Tanganyika, Gold Coast, China, the Klondyke of Alaska, British Columbia, Western United States, South America and Australia. Alluvial gold is also found in small quantities in the deposits of several British rivers, in Cornwall, North Wales, Wicklow, Leadhills and Sutherlandshire.

Description

Gold occurs very widely diffused in nature, chiefly in the free state, but invariably alloyed with silver or copper, and occasionally with bismuth, mercury and other metals. Native gold has been known to contain as much as 99.8 per cent. gold, but as a rule ranges from 85 per cent. to 95 per cent., the balance being usually silver for the most part.

Gold, when pure, is the most malleable and ductile of all metals, but becomes brittle in the presence of small amounts of bismuth, lead, arsenic, etc. It has a specific gravity of 19.3, and it melts at about 1,060 deg. C.

Gold is recovered from alluvial deposits by water concentration. The pay dirt is washed down over metal sheets specially treated with mercury. The heavy metal settles and amalgamates with the mercury, and afterwards is scraped off, appearing as heavy dingy grey lumps, but none the less valuable for its drab appearance. It is then treated and the gold extracted, the mercury going back into production.

Gold is used chiefly for coinage and jewellery. It is usually alloyed with silver or copper to withstand wear better. The purity, or as it is known in the trade the " fineness," of gold is expressed in parts per 1,000, the standard for coin in the British Commonwealth being 916.6 parts of gold to 83.4 of copper. In England the legal standard for jewellery is the carat of 22, 18, 15, 12 or 9 parts per 24. To-day the legal market price of gold is £8 4s. an ounce.

Gold is commonly measured in grains, pennyweights and ounces Troy. In 1912 the total world production of gold amounted to nearly 23,000,000 fine ounces. The British Commonwealth is responsible for about 60 per cent. of the entire world output.

Common Form. When finally processed appears as flat yellow slabs. When mined is usually found in grains or scales in alluvial deposits. It is associated with zircon, ruby, corundum, topaz, garnet and other precious stones. It is also found in rounded masses known as " nuggets," which are found frequently embedded in quartz veins. Occasionally the metal occurs in strings, threads, etc. The names, grain gold, thread gold, wire gold, foil gold, moss gold, tree gold, mustard gold, sponge gold, indicate the varied forms assumed by the metal.

Colour.—The yellow colour of native gold from different localities varies in shade, and some specimens possess a coppery or bronze yellow colour. When much silver is present, as is sometimes the case, the metal may appear almost white. In thin leaves by transmitted light gold is green.

Lustre. Metallic, opaque.

Tests

Gold is never mistaken for any other mineral. However, illicit gold buyers in their greed are sometimes hoist by their own petard and have the following substances passed on to them as gold :

MARCASITE	PYRITE	
CHALCOPYRITE	BRASS FILINGS	YELLOW MICA

Other tricks of the sellers are to heavily coat a piece of brass or copper with gold paint of good quality in order to defeat the acid test ; to insert a core of gold in a slab of heavy gold-appearing metal, so that when the buyer applies acid to test its genuineness, he automatically drops the acid on the centre gold core.

Gold is not attacked by a single acid, therefore the standard test is with nitric acid, which gives no reaction on gold, but, on brass or copper, etc., produces a bubble reaction and a blue colour. It is malleable and easily filed or pricked with a needle, or can be hammered out to a thin film ; it is about three times heavier than any mineral commonly mistaken for it.

Iron pyrites, which can be mistaken for gold, cannot be cut with a knife, whilst copper pyrites crumble beneath the blade and give a greenish-black streak. Heated on charcoal with sodium carbonate, all gold compounds give a yellow malleable globule of gold.

Gold in amalgam may be recovered by any of the following small scale methods : first squeeze the amalgam in chamois leather or in fine calico to express excess mercury ; place the resultant amalgam pill on an iron shovel and cover with a raw potato, in which has been scooped a hole about twice the size of the amalgam. To enable the potato to stand on end one end should be cut off. Heat the shovel on a fierce flame for about ten minutes, at the end of which the gold will be found on the shovel, and the mercury may be recovered by breaking the potato in a dish under water; or, having squeezed the amalgam, wrap it in a piece of brown paper and heat on the shovel as before; or dissolve the mercury in dilute nitric acid in a porcelain basin, renewing the acid from time to time. Finally, by using a blowpipe and placing the amalgam in a depression in a porcelain plate, the mercury may be volatilised, thus leaving the gold.

For testing articles suspected to be gold the streak plate may be used. This is simply a portion of unglazed porcelain upon which the suspect article is lightly rubbed, leaving a yellow streak. Nitric acid is then applied to the streak and the reaction or otherwise is noted. By this test, jewellers can also test the fineness of gold.

Portable field outfit for gold investigation purposes.—The following is a suggested list of items for outside investigation work by the gold detective :

NITRIC ACID (concentrated).—To be kept in a glass-stoppered bottle and again encased in a wooden cover with a screwed wooden top.

STREAK PLATE.—A piece of unglazed porcelain.

SMALL HAMMER.

FILE.

PORCELAIN BASIN.

CHAMOIS LEATHER or FINE CALICO.

POTATO.

SMALL PRESSURE STOVE.

In conclusion, students of hallmarks should note that South Africa now has a registration Gold Hallmark. This consists of a Springbok's (a form of buck) head inside the letter "U." Beside the Springbok's head there is an "A" in Old English which denotes 1948, the year of manufacture.

Offences and Case Law

BY A BOROUGH CHIEF CLERK

VI.—FORTUNE-TELLING AND KINDRED OFFENCES

THERE are two statutes in force dealing with the offence of fortune-telling. One of these is the Witchcraft Act, 1735, and the other is the Vagrancy Act, 1824.

The Witchcraft Act, 1735, provides that no prosecution shall be commenced or carried on against any person for witchcraft, enchantment, or conjuration. But section 4 of that Act, which is still in force, makes liable to punishment any person "pretending" to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration.

Section 4 is as follows: Pretending to exercise witchcraft, tell fortunes, or by crafty science to discover stolen goods: and for the more effectual preventing and punishing any pretences to such acts or powers . . . whereby ignorant persons are frequently deluded and defrauded . . . if any person shall . . . pretend to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertake to tell fortunes, or pretend from his or her skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found . . . (he shall be liable on conviction on indictment to imprisonment for any term not exceeding one year).

There have been at least three prosecutions under the Witchcraft Act, 1735 during the past fifty years, *R.* v. *Stephenson* (1904) (68 *J.P.* 524) being a case in which the defence suggested that they were entitled

to call evidence to show that palmistry is a well-recognised science, and that persons who practise it have a professional position, and that they were also entitled to call evidence to show that there is a well-understood thing as palmistry and clairvoyance and that the defendants had practised in a genuine manner. However, it was held by the Court that evidence that one of the defendants used crystal balls and professed to be able by gazing into the balls to foresee future events was admissible, but that evidence that palmistry was a well-recognised science was not admissible. It was also held in *R.* v. *Stephenson* and in *R.* v. *Giles* (1865) (*L. & C.* 502) that if in fact money has been obtained on a representation of power to communicate with the spirits of deceased or other persons not present, the person so obtaining it is guilty of the offence of obtaining money by false pretences.

The case of *R.* v. *Birch* (*J.C.L.* III, 196) was a case tried at Portsmouth Quarter Sessions in 1939, when the defendant, a gipsy, was indicted for undertaking to tell fortunes contrary to the Witchcraft Act, 1735. The defendant's method of operation was to borrow a ring from some person whose fortune she pretended to tell, alleging that she could remove a spell from it which was bringing the owner bad luck. The owner was instructed to buy a piece of the best English beef-steak, wrap a human hair in it, and bury it. Other spells to be performed were the burning of a glove containing a needle and a pin, and sleeping with a small crystal under the mattress. She had previously been charged with and acquitted of false pretences on similar facts, the defence being that she had always returned the ring, and had in fact done so before the proceedings were actually begun. Accordingly a count was inserted under the Witchcraft Act, to which charge any question as to any intent to keep the goods was irrelevant, and she was convicted and bound over for two years.

The year 1944 saw another prosecution—*R.* v. *Duncan* (1944. 2 *A.E.R.* 220)—where the appellant was convicted before the Recorder of the Central Criminal Court, of conspiracy to commit an offence against section 4 of the Witchcraft Act by reason of the fraudulent conducting of spiritualistic seances. It was emphasised by the Recorder at the trial that the only matter to be decided by the jury was whether there was a pretence or not. The prosecution did not seek to prove that spirits of deceased persons could not be called forth or materialised or embodied in a particular form, but when it became evident that the defendant was endeavouring to establish her bona fides by evidence of genuine manifestations, counsel for the Crown sought to ask a question of a witness to show that the defendant had been convicted of fraudulently obtaining money by pretending to be a medium at Edinburgh in 1933, when she was fined £10. The Recorder said that had the evidence for the defence been confined to the dates in the indictment, he would not have admitted the fact of the former conviction, but that as the case had taken a much wider course and the jury had been asked to regard her as a genuine medium, they were entitled to know of the conviction. Another point upon which there was some argument was whether the defendant should be permitted to demonstrate her powers to the jury. The Recorder said that it would be a waste of time, and that the case must be tried on what had happened and not on what might happen.

The main ground of the appeal in *R.* v. *Duncan* was that on a true construction of the statute the offence was confined to the pretended conjuration of "evil spirits" only. The Court of Criminal Appeal, however, in spite of some earlier definitions of conjuration in law dictionaries, refused to limit the offence in the way suggested by the defendants, and held that it was, therefore, an offence to pretend to hold conversation with the spirits of deceased persons.

Vagrancy Act, 1824, Section 4

(*a*) Every person pretending or professing to tell fortunes;
(*b*) or using any subtle craft, means, or device, by palmistry or otherwise;
(*c*) to deceive and impose on any of His Majesty's subjects.

"*Pretending or professing to tell fortunes*"

Lord Chief Justice Lawrenson in the course of his judgment in *Stonehouse* v. *Masson* (1921) (85 *J.P.* 167) said that he entirely agreed with the general proposition that there must be *mens rea*, but that was not true of every statute creating an offence. In some cases *mens rea* was not necessary, and in the case of pretending or professing to tell fortunes it was not necessary. The decision of the Divisional Court in *Stonehouse* v. *Masson* accordingly enables the courts to accept as settled that pretending or professing to tell fortunes is an offence under section 4 of the Vagrancy Act, 1824, and is still an offence whether or not the fortune-teller may believe that he or she has the power professed to be exercised.

In a case which came before the Marlborough Street Court in 1927, it was submitted by the defence that what the defendant was doing was merely an entertainment, and that she actually told visitors that she was not a fortune-teller. The learned magistrate said that the only question to be considered was whether she was telling fortunes, and it would be ridiculous for people to pay 10s. 6d. for entertainment of that sort. The defendant was fined £25. The legal position, therefore, would appear to be that any person who pretends or professes to tell fortunes commits an offence, even though it be the amateur palmist at a garden party or fête who obtains money for charitable purposes, whether or not she is paid for her services, and even though the people who visit her do so merely for the purpose of entertainment.

At one of the London Courts in 1936, a woman was summoned for pretending to tell fortunes, the case for the prosecution being that the defendant attracted a crowd by her patter, and then on a blackboard she made calculations for the purpose of showing that another war was due soon. She then sold at 3d. each, horoscopes based on astrological research, and besides reading a character, each document purported to tell the future. The purchaser was invited by the last paragraph to send the date of birth, together with 6d. and a stamped addressed envelope, to a given address, if a more detailed reading was desired. The defence was that nothing more had been done than was being done every day in the national newspapers, and that the defendant had merely said what was stated, by means of newspaper horoscopes, to thousands of people. This submission was, however, overruled and the defendant fined £1.

In *Barbanell* v. *Naylor* (1936) (1936. 3 *A.E.R.* 66) it was held that to tell fortunes generally by means of newspaper articles which do not refer to any individual persons is not an offence within the meaning of the Vagrancy Act, 1824. In that case the respondent was the author of articles entitled "What The Stars Foretell," which was published in one of the Sunday newspapers purporting to foretell the future by means of astrology. Giving judgment, Lord Hewart C.J. said, "In the Court below the argument on behalf of the respondent was that statements addressed generally to all readers of the articles, and especially to those born on a particular day, did not amount to professing to tell the future of any individual. I think that is right, and in my opinion the prosecution must rightly fail."

It was held in *Penny* v. *Hanson* (1887) (51 *J.P.* 167) to be ample evidence that the appellant had pretended to tell fortunes, without proof that he had actually told anyone anything, where he offered by advertisements in newspapers to cast nativities and answer astrological questions, and pretended by circular letter in return for certain remuneration, to give a description of the person, liability to disease, occupation most suitable, marriage, etc., by the position of the planets at the nativity.

The offence under the Vagrancy Act is pretending or professing to tell fortunes (in the plural), words which, it has been said, point to a course of conduct, and which can hardly be considered as covering an isolated act. Upon this point, however, there does not appear to be any decided case, but the view appears to be supported by the history of the law against vagrants which was discussed at some length in *Monck* v. *Hilton* (1877) (41 *J.P.* 214). If this interpretation of the section is correct, the proper form of information is one covering a period of time, and it is not admissible to have a series of convictions upon separate informations each alleging an offence upon one date.

"Or using any subtle craft, means or device, by palmistry, or otherwise"

It is probable that the words "or otherwise" do not include the use of cards, in "the use of any subtle craft, means or device to deceive and impose upon any of His Majesty's subjects," but, of course, this is not important where the cards are used for fortune-telling, for it is the "professing to tell fortunes" in the first part of the section which is in itself an offence.

In a case at Lambeth Court in 1923, it was alleged that the defendant, carrying a banner and wearing a gown, received money from a woman in the street, took a piece of blank paper, rolled it up and placed it in a test tube, and then put it in an inside pocket. He then announced that he would speak with the "Wise Man in the East," and went through various gesticulations. When the paper was handed back to the woman it bore a written delineation of character. It was explained to the magistrate that the defendant's method was to use papers on which characters had been written in invisible ink. By means of an enema, which was found upon him, and which contained chemicals, he was able in the course of his gesticulations to eject chemicals upon the paper, so as to bring out the characters written in invisible ink. The learned magistrate held that the defendant was professing to read character rather than professing to tell fortunes and discharged him. However as *The Justice of the Peace* commented at the time, without doubt this was a correct legal decision, but the use of an enema for such a purpose was certainly worthy of the description of a "subtle device," and it is probable that a charge under the second part of the section of "using a subtle device to deceive and impose upon His Majesty's subjects" might have succeeded.

In *Johnson* v. *Fenner* (1869) (33 *J.P.* 740) the section was held not to apply to the case of a person who obtained money by sleight of hand in selling to another a valueless purse into which he skilfully pretended to put some silver coins. The judges deciding the case expressed the opinion that the proper course to have taken would have been to proceed against him for obtaining money by false pretences. In their view the trick carried out, not being palmistry, ought to be something having the general character of palmistry, because of the well-known rule of construction limiting the general meaning of the words "or otherwise" by the narrower signification of the words preceding them.

The same point of interpretation came up again in *Monck* v. *Hilton* (1877) *supra* in which the law as at present applied was settled. The particular device or craft complained of in *Monck* v. *Hilton* was Spiritualism or spiritualistic table rappings and it was admitted that these practices were unknown and could not have been in the contemplation of the legislature when it made palmistry illegal.

The defence argued that the words "or otherwise" must be limited to the palmistry genus, and that although palmistry, physiognomy and chiromancy came within the genus, spiritualism did not. The Divisional Court overruled this submission and held that the words "or otherwise" are distinct from the previous general words, and whilst the words of the section might not be extended to apply to something in its character and pretences, entirely different from fortune-telling and palmistry, they could not be limited to these having regard to the use of the words "or otherwise" in the section which accordingly embraces such offences as pretending to hold communication with the spirits of deceased persons and apparently includes anything of an "occult" or "supernatural" character.

"To deceive and impose upon any of His Majesty's subjects"

It was held in *R.* v. *Entwistle* (1899) (63 *J.P.* 423) that "pretending" in the section implies an intention to "deceive and impose," and that the justices are entitled to assume that pretending to tell fortunes is a deceitful practice, and that proof of deceit is not necessary. It is prohibited by statute irrespective of the belief of the fortune-teller in his or her own powers.

In *Monck* v. *Hilton* (1877) *supra* it was said that "section 4 includes all persons who pretend to tell fortunes, which imports that deception is practised by doing so," and the Divisional Court decided in *R.* v. *Entwistle* (1889) *supra* that the word "pretend" implies that there was an intention to deceive and impose and that there was, therefore, no necessity to aver such intent in the conviction, the justices having found that there was, in fact, such an intent. The judges were of the opinion that the words "to deceive and impose" were not applicable to the earlier part of the section at all, but were inserted to govern the later words as to "subtle crafts, means or devices by palmistry or otherwise."

However, in 1918, a decision was made by the High Court in the case of *Davis* v. *Curry* (82 *J.P.* 21), which raised considerable difficulty for Magistrates until the Divisional Court in *Stonehouse* v. *Masson* (1921) *supra* decided that the judgment in *Davis* v. *Curry* was wrong. Darling and Sankey J. J. in *Davis* v. *Curry*, decided that an intention to deceive is an ingredient of the offence of fortune-telling and that the accused was entitled, therefore, to call evidence that he honestly believed that he possessed the power that he claimed, for said Darling J. "Many persons honestly believe in nonsense, but we do not punish them for it." Avory J., dissented from this on the ground "that the art of pretending or professing to tell fortunes, especially when done for gain, was prohibited entirely by the statute, which imported that deception was practised thereby, irrespective of the actual frame of mind of the person so pretending or professing, or any special evidence of dishonesty, and that the legislature intended to make it unlawful and to prohibit any person from pretending or professing to tell fortunes."

Lawrence, L.C.J., in the course of his judgment in *Stonehouse* v. *Masson* (1921) *supra* said that the words "to deceive and impose" in the section did not apply to the "professing to tell fortunes"; they only qualified the words "using any subtle craft, means, or device by palmistry or otherwise" and the telling of fortunes was *ipso facto* an offence. Darling J., who was a member of the Court in both *R.* v. *Entwistle* and *Davis* v. *Curry* said that "he had come to the same conclusion after doubt and in consequence of the full argument they had heard. That was in conflict with his judgment in *Davis* v. *Curry*, but was in accordance with his judgment in *R.* v. *Entwistle*. He had arrived at his conclusion after consideration of the old statutes passed before the statute under which these proceedings were brought. He had come to the conclusion that the legislature had decided that fortune-telling and professing to tell fortunes was a fraud, and that it was a deception in itself, and that quite independently of the question whether the person who told the fortune believed that she could tell fortunes or not. For these reasons the judgment in *Davis* v. *Curry* was wrong, and that in *R.* v. *Entwistle* was right."

In 1925, the case of *Irwin* v. *Barker* (89 *J.P.N.* 313) resolved itself largely into an attempt to have the case of *Stonehouse* v. *Masson* overruled. Shortly, the prosecution adduced evidence that the defendant told fortunes, whilst the defendant contended that there was a spiritualist seance and nothing more, and that there was no actual deception for in fact the Police went to the defendant for the purpose of being deceived, believing before they went that she was an imposter. The Lord Chief Justice, however, said that the appeal manifestly failed, and that the law was as stated in *Stonehouse* v. *Masson*, where it was put into one sentence that the words "to deceive and impose on any of His Majesty's subjects" qualify the words "using any subtle craft, means, or device, by palmistry or otherwise," and do not refer to the preceding words "pretending or professing to tell fortunes" because the latter is *ipso facto* a deceiving. That law was now clearly settled.

It should be noted that there is a discrepancy between the law of Scotland and that of England with regard to fortune telling. In England as stated above the bare fact of pretending or professing to tell fortunes is a contravention of section 4 of the Vagrancy Act, 1824. In Scotland, this is no offence unless the Court is satisfied that the fortune-teller intended to deceive and impose upon His Majesty's subjects, for such is the interpretation placed by the High Court of Justiciary upon the wording of section 4 (*Farmer* v. *Mill* (1948) THE POLICE JOURNAL, Vol. XXI, No. 1, page 21).

It is generally considered that persons who visit fortune-tellers for the purpose of having their fortunes told (whether or not they are deceived) if they do nothing to induce the person to tell their fortunes cannot be said to aid and abet in the pretence, and are not therefore liable as aiders and abettors.

The defence also often raise the point that the Police have themselves committed an offence where they visit a fortune-teller's premises in plain clothes and without disclosing their identity allow the defendant to tell their fortunes so as to obtain the necessary evidence for a prosecution. The Royal Commission on Police Powers and Procedure in 1929 recommended that "as a general rule the police should observe only without participating in offences" but recognised as an exception to that rule the propriety of police officers obtaining evidence, in cases such as fortune-telling, where observation is impossible without participation. But the remarks of Lord Goddard C.J. in *Brannan* v. *Peek* (1947) (2 *A.E.R.* 572) (where the police participated in betting on licensed premises) should be noted—"The court observes with concern and disapproval the fact that the police authority thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that, unless an Act of Parliament provides for such a course of conduct—and I do not think any Act of Parliament does so provide—it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected. It is not right that police authorities should instruct, allow, or permit detective officers or plain clothes constables to commit an offence so that they can prove that another person has committed an offence. I hope the day is far distant when it will become a common practice in this country for police officers to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence."

ARREST UNDER SECTION 4 OF THE VAGRANCY ACT, 1824

On September 13th, 1948, section 68 of the Criminal Justice Act, 1948 came into force and is as follows:

"Notwithstanding anything in section 6 of the Vagrancy Act, 1824 (which deals with the apprehension of offenders) a person found committing the offence of pretending, and professing to tell fortunes, or using any subtle craft, means or device, by palmistry, or otherwise, to deceive and impose on any of His Majesty's subjects, shall not be apprehended by a constable, unless the constable has reason to believe that that person will abscond unless arrested or is not satisfied as to the identity or place of residence of that person."

THE POLICE AND PROSECUTIONS

Extract from Parliamentary Debates of May 3rd, 1945 :

Mr. T. J. Brooks asked the Secretary of State for the Home Department whether he will introduce legislation to amend the law relating to the activities of spiritualist mediums; and whether he will make a statement as to the present position of mediums under the existing law and as to the considerations which should guide the Police in taking prosecutions under this law.

Mr. H. Morrison : I am afraid that legislation on this controversial subject is out of the question at present. While some people may press for more latitude to those who offer to exhibit spiritualistic phenomena, other people might well advocate tighter restrictions over such activities, which are, of course, capable of being used fraudulently for the purpose of obtaining money. I have no doubt that those who genuinely believe in the existence of mediumistic powers are in complete agreement with the policy of punishing such fraudulent practices under the criminal law. The relevant provisions of the law are contained in section 4 of the Vagrancy Act, 1824, and in the Witchcraft Act, 1735. While I have no power to determine questions of law, I am advised that the provisions of the Witchcraft Act—which abolished proceedings "for witchcraft, sorcery, enchantment or conjuration" and substituted a provision penalising fraudulent pretences to the exercise or use of such arts or powers—make it quite clear that the mischief aimed at by the Statute is imposture or fraud. The same is true of the Vagrancy Act, 1824, *except in so far as it relates to fortune-telling*. The Police have been advised by the Home Office that, having regard to the statutory provisions, proceedings should be instituted only against persons whose activities have been the subject of complaint by members of the public, and where there is sufficient evidence that the person is an imposter and is taking money or other valuable consideration. I hope that this answer will help to remove any misapprehensions which may at present exist as to the mischief aimed at by the existing law, which, as I have said, is aimed at imposture or fraud.

The Prize Winners

THE Committee in charge of the arrangements for the King's Police Gold Medal Essay Competition have submitted to the Home Secretary their report on the competition held in 1949. The subject set for the essay was "Co-operation between the Uniform Branch and

the Criminal Investigation Department in the prevention and detection of crime."

The Committee reported that the competition attracted a large entry and that many of the essays reached a high standard of competence.

Awards have been approved as follows:

His Majesty's Gold Medal and First Prize of Twenty Guineas
Superintendent F. ELMES, Dorsetshire Constabulary.

Second Prize of Fifteen Guineas
Superintendent G. S. MACDONALD, Middlesbrough Borough Police.

Third Prize of Ten Guineas
Detective Sergeant J. PESSELL, Exeter City Police.

The subject and rules for this year's Competition are printed below.

We have pleasure in printing the Gold Medal essay at pages 265 to 274 of this issue, and offer our sincere and hearty congratulations to the winner and to both the runners-up.

THE KING'S POLICE GOLD MEDAL ESSAY COMPETITION

Rules for the 1950 Competition

1. The Competition shall be held annually and shall be open to serving members of regular Police Forces within the Commonwealth, including trust territories; and members of Police Corps in occupied territories in Europe who will rejoin a recognised police force within the Commonwealth, including trust territories, on expiry of their secondment. Any question as to the eligibility of any competitor shall be determined by the Committee of the Competition.

2. (1) The following prizes according to order of merit may be awarded :
   (*a*) As a first prize, His Majesty's Gold Medal and, subject as hereinafter provided, a cash prize of twenty guineas.
   (*b*) A second prize of fifteen guineas.
   (*c*) A third prize of ten guineas.

   (2) In awarding prizes, the Committee shall have regard to a general standard of competence and merit, and, subject thereto, may in their discretion withhold the award of the Gold Medal while awarding a first prize of twenty guineas or may withhold altogether the award of a first prize and award only the second and third prizes above-mentioned; the Committee may in their discretion divide any of the cash prizes.

3. (*a*) Essays must be the original work of the competitor.
   (*b*) Essays must be submitted in triplicate. Essays must not exceed 5,000 words in length; and must be typewritten (with double spacing) on one side only of the paper, with $1\frac{1}{2}$ inches margin space on the left-hand side.
   (*c*) Where a reference is made to any published work the title must be quoted in a footnote.

4. (*a*) Each essay must bear at the top of the first page the *nom-de-plume* or motto of the writer.
   (*b*) Each essay must be accompanied by a *sealed envelope* bearing on the outside the *nom-de-plume*, or motto, and containing inside the Competitor's name, rank, and the official address of the force to which he belongs. (N.B.—*The name of the Competitor must not appear on the essay or other document other than that enclosed in the sealed envelope.*)
   (*c*) Essays must be submitted ANONYMOUSLY by registered post.

5. The Committee shall as they think fit appoint such persons not being members of the Committee to act as Referees or Judges of the essays under such conditions as they may prescribe.

6. The award of the Committee shall be made public in such manner as the Committee shall think fit; and any essays submitted for the Competition and adjudged of sufficient merit may be published by the Committee.

SUBJECT OF THE ESSAY FOR 1950

"*The Police Service as a career—a review of the past with suggestions for the future.*"

Essays must be submitted on or before December 1st, 1950, to:

THE SECRETARY TO THE COMMITTEE OF THE
KING'S POLICE GOLD MEDAL COMPETITION,
ROOM 111,
HOME OFFICE,
WHITEHALL,
LONDON, S.W.1.

NOTE.—The only substantial modification of the rules this year is in Rule 3 (*b*), which prescribes that the maximum number of words permissible in each essay submitted is 5,000.

With regard to Rule 4 (*b*) the Committee wish again to point out that since essays are submitted anonymously it is not possible for the Secretary to acknowledge the receipt of entries. Entrants may therefore desire, for their own satisfaction, to obtain from the Post Office an "Advice of Receipt" form when posting their entries in accordance with this rule.

Correspondence

The author of the article "Soliciting and Offences by Prostitutes" in our issue for January 1949 writes:

"At page 55 I discussed the question of proof that importuning under Section 28 of the Town Police Clauses Act, 1847, was 'to the annoyance of passengers or residents.'

"The recent case of *Frederick Platts Co. Ltd.* v. *Grigor* (1950) 1 All E.R. 941; 66 T.L.R. 859, is of some assistance, though it must be remembered that this is a civil case and not a criminal one.

"Proceedings had been taken before a county court Judge for possession of a flat, on the ground that the tenant had been guilty of conduct which was a nuisance or annoyance to adjoining occupiers. The Judge found that the tenant was using the flat for bringing in men for immoral purposes, but there was no evidence by adjoining occupiers of premises of actual inconvenience or annoyance to them, and he held that nuisance or annoyance could not therefore be inferred.

"The Court of Appeal held that the Judge would have been entitled, though not obliged, to infer from the use of the flat by the defendant that she had been guilty of conduct which was a nuisance or annoyance to adjoining occupiers without specific evidence from them to that effect. In the particular circumstances, however, the Court of Appeal did not interfere with his decision."

Reviews

PHIPSON'S MANUAL OF THE LAW OF EVIDENCE. 7th Edition. By Sir Roland Burrows, K.C. Sweet & Maxwell Ltd. Price £1 2s. 6d. net.

Readers of reports of a recent Central Criminal Court prosecution may recall that the learned Judge was asked to allow the jury to inspect a dog, and many may have wondered what evidential value the inspection of the animal would have. The answer is found at page 12 of this new edition of *Phipson's Manual*, and it is an illustration of the practical value this text-book has. Every principle of evidence is explained concisely and accurately with practical examples of what is and what is not admissible. This new edition has been brought up to date by the inclusion of much new case and statute law, and we thoroughly recommend it to our readers, both as a text-book for the student and as a practical manual for the police officer who has to prepare cases for presentation to court.

HARRIS AND WILSHERE'S CRIMINAL LAW. By A. M. Wilshere, M.A., LL.B. 18th Edition. Sweet & Maxwell Ltd. Price £1 10s.

The eighteenth edition of this well-known work was made necessary by the Criminal Justice Act, 1948. The essential provisions of that Act have been incorporated in the text, and the book presents the Criminal Law as it stood in March 1950. The new edition has all the features of previous editions, its particular value lying in its presentation of its subject matter in a logical, orderly form. Police officers will find most helpful the chapters on the nature and elements of a criminal offence, and that on evidence. Particular offences are treated in detail with reference to decided cases. The sections on summary jurisdiction are not of the same standard as the rest of the work but the blemishes are not serious. Those parts to which police are likely to refer are as good as ever.

HAYWARD & WRIGHT'S OFFICE OF MAGISTRATE. 8th Edition. By James Whiteside. Butterworth & Co. (Publishers) Ltd. Price 17s. 6d.

Police officers whose work takes them at all frequently to court should have available Mr. Whiteside's new edition of this well-established manual for justices. We know of no other book of its kind which deals so clearly and accurately with procedure in court in respect of summary and indictable cases as well as procedure in juvenile courts. The chapter on licensing is also excellent.

The remainder of the book is not directly concerned with police work but mak[es] good reading for those who wish to acquire a closer knowledge of the history and duties of the justices of the peace.

CRIMINAL PROCEDURE. By A. M. Wilshere, M.A., LL.B. Sweet & Maxwell Lt[d]. Price 15s. net.

This text-book on Criminal Procedure is a reprint of Parts IV and V of *Harr[is] & Wilshere's Criminal Law*, the 18th edition of which has just been published. [It] deals with the procedure upon prosecution for indictable offences, and summa[ry] jurisdiction, and if the many changes wrought by recent legislation have not all be[en] noted, that is only a slight criticism of what is essentially a very fine work. It is [of] interest to police officers since it is concerned wholly with criminal law, and sectio[ns] on warrants, powers of search and evidence are particularly noteworthy. It is on[ly] half the price of the parent volume and is remarkably good value as a book on th[e] most important subject, procedure.

The Colonial Police

The following appointments are announced by the Colonial Office:

AKKER, M. K., Assistant Superintendent of Police, Uganda.	Assistant Superintendent of Polic[e], Zanzibar.
BLYTH, P. R., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Polic[e], Northern Rhodesia.
BROCKWELL, D. M., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Polic[e], Northern Rhodesia.
CAUNCE, N. A., Inspector of Police, Uganda.	Assistant Superintendent of Polic[e], Uganda.
DIXIE, D. G. D., Superintendent of Police, Bahamas.	Assistant Superintendent (C.I.D.[)], Sierra Leone.
DRURY, R. G. N., Assistant Superintendent of Police, Tanganyika.	Assistant Superintendent of Police, Zanzibar.
FITHER, J. M., Senior Inspector of Police, Mauritius.	Assistant Superintendent of Police, Mauritius.
KEALEY, J., Assistant Superintendent of Police, Jamaica.	Senior Assistant Superintendent [of] Police, Jamaica.
O'LEARY, B. G., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Polic[e], Northern Rhodesia.
RAMPAL, M. H., Assistant Superintendent of Police, Mauritius.	Superintendent of Police, Mauritius.
ROSS, J. W. J., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Police, Northern Rhodesia.
SULLIVAN, J. M., Assistant Superintendent of Police, Zanzibar.	Assistant Superintendent of Police, Uganda.
WARD, I. O., Inspector of Police, Northern Rhodesia.	Assistant Superintendent of Police, Northern Rhodesia.
WOODHOUSE, H. S., Superintendent of Police, Somaliland Protectorate.	Assistant Superintendent of Police, Kenya.

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ERRATUM

Page 218, line 14, *for* Section 11 *read* Section 12.

தமிழ்நாடு ஆவணக்காப்பக நூலகம்,
எழும்பூர், சென்னை-600 008.

தவணைத்தாள்.

சே. எண் : பு. எண் :

வழங்கிய நாள். (1)	திரும்பிய நாள். (2)	வழங்கிய நாள். (1)	திரும்பிய நாள். (2)

S.F. 259A-6—1,00,000—30-1-84.